

CONRAIL®

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INTERSTATE COMMERCE COMMISSION

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INTERSTATE COMMERCE COMMISSION

September 28, 1993

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SEP 28 1993 - 10 11 AM  
INTERSTATE COMMERCE COMMISSION

Mr. Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
12th Street and Constitution Avenue, N.W.  
Washington, DC 20423

VIA HAND DELIVERY

RECEIVED  
OFFICE OF THE  
SECRETARY  
SEP 28 9 10 AM '93  
LICENSING BRANCH

Dear Secretary Strickland:

Enclosed for recordation with the Interstate Commerce Commission pursuant to Section 11303 of Title 49 of the U.S. Code, and regulations promulgated thereunder, are five original counterparts of a Lease Agreement, a primary document, dated September 15, 1992, a Lease Supplement No. 1, a secondary document, dated September 15, 1993, an Equipment Trust Agreement, a secondary document, dated September 15, 1992, and an Equipment Trust Agreement Supplement No. 1, dated September 15, 1993. The names and addresses of the parties to the documents are as follows:

Lease Agreement :

Lessor: Meridian Trust Company  
35 North Sixth Street  
Reading, PA 19603

Lessee: Consolidated Rail Corporation  
2001 Market Street - 25A  
Two Commerce Square  
Philadelphia, PA 19101-1425

Lease Supplement No. 1:

Lessor: Meridian Trust Company  
35 North Sixth Street  
Reading, PA 19603

Lessee: Consolidated Rail Corporation  
2001 Market Street - 25A  
Two Commerce Square  
Philadelphia, PA 19101-1425

Equipment Trust Agreement:

Equipment Trust  
Trustee: Wilmington Trust Company  
Rodney Square North  
Wilmington, DE 19899

Lessor: Meridian Trust Company  
as Owner Trust Trustee  
35 North Sixth Street  
Reading, PA 19603

Lessee: Consolidated Rail Corporation  
2001 Market Street - 25A  
Two Commerce Square  
Philadelphia, PA 19101-1425

Equipment Trust Agreement Supplement No. 1:

Equipment Trust  
Trustee: Wilmington Trust Company  
Rodney Square North  
Wilmington, DE 19899

Lessor: Meridian Trust Company  
as Owner Trustee  
35 North Sixth Street  
Reading, PA 19603

Lessee: Consolidated Rail Corporation  
2001 Market Street - 25A  
Two Commerce Square  
Philadelphia, PA 19101-1425

The equipment affected by the documents consists of 1,749 rebuilt and new railcars specifically described in the Lease Supplement No. 1.

A short summary of the documents to appear in the index follows:

**Lease Agreement:** A Lease Agreement dated September 15, 1993, between Consolidated Rail Corporation, 2001 Market Street, Phila., PA 19101-1425, as Lessee, and Meridian Trust Company, 35 North Sixth Street, Reading, PA 19063, as Lessor.

**Lease Supplement No. 1:** Lease Supplement No. 1, dated September 15, 1993, between Consolidated Rail Corporation, 2001 Market Street, Phila., PA 19101-1425, as Lessee, and Meridian Trust Company, 35 North Sixth Street, Reading, PA 19063, as Lessor, covering 1,749 new and rebuilt railcars as specifically described therein.

**Equipment Trust Agreement:** An Equipment Trust Agreement, dated September 15, 1993, among Consolidated Rail Corporation, 2001 Market Street, Phila., PA 19101-1425, as Lessee, and Meridian Trust Company, 35 North Sixth Street, Reading, PA 19063, as Owner Trustee, and Wilmington Trust Company, Rodney Square North, Wilmington, DE 19899, as Equipment Trust Trustee.

**Equipment Trust Agreement Supplement No. 1:** Equipment Trust Agreement Supplement No. 1, dated September 15, 1993, among Consolidated Rail Corporation, 2001 Market Street, Phila., PA 19101-1425, as Lessee, and Meridian Trust Company, 35 North Sixth Street, Reading, PA 19063, as Owner Trustee, and Wilmington Trust Company, Rodney Square North, Wilmington, DE 19899, as Equipment Trust Trustee.

A fee of \$64.00 is enclosed. Please stamp and return the copies not needed by the Commission for recordation to our messenger.

Very truly yours,



Cheryl A. Cook  
Associate General Counsel  
Two Commerce Square - 16A  
(215) 209-5042  
(215) 209-4819 (Fax)

/dr

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SEP 28 1993 -9 15 AM

INTERSTATE COMMERCE COMMISSION

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EQUIPMENT TRUST AGREEMENT

dated as of September 15, 1993

between

WILMINGTON TRUST COMPANY,  
Equipment Trust Trustee,

and

CONSOLIDATED RAIL CORPORATION

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Leased Equipment

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Filed with the Interstate Commerce Commission pursuant to  
49 U.S.C. Section 11303 on September 28, 1993, at \_\_\_\_\_ a.m.,  
recordation number \_\_\_\_\_, and deposited in the office of the  
Registrar General of Canada pursuant to Section 90 of the Railway  
Act of Canada on September 28, 1993, at \_\_\_\_\_ a.m.

Reconciliation and tie between the Equipment Trust Agreement dated as of September 15, 1993, and the Trust Indenture Act of 1939. This reconciliation section does not constitute part of the Equipment Trust Agreement.

<u>Trust Indenture Act of 1939 Section</u>	<u>Equipment Trust Agreement Section</u>
310(a)(1) .....	8.09
(a)(2) .....	8.09
312(a) .....	2.06(a)
(c) .....	14.11
313(a) .....	8.11
314(a) .....	13.01(a)-(d)
(b) .....	13.01(e)
(c)(1) .....	14.04
(c)(2) .....	14.04
(d)(1) .....	8.04(c)
(d)(2) .....	8.04(c)
(d)(3) .....	Not applicable
(e) .....	14.05
315(b) .....	8.05
316(a) (last sentence) .....	Appendix A ("Outstanding")
(a)(1)(A) .....	7.06
(a)(1)(B) .....	7.05
(b) .....	7.08
(c) .....	7.06(b)
317(a)(1) .....	7.03(h)
(a)(2) .....	7.09
(b) .....	2.09(c)
318(a) .....	14.10

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## EQUIPMENT TRUST AGREEMENT

THIS EQUIPMENT TRUST AGREEMENT, dated as of September 15, 1993, between WILMINGTON TRUST COMPANY, a Delaware banking corporation (the "Equipment Trust Trustee"), and CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (the "Company"),

### W I T N E S S E T H:

WHEREAS, the Company has duly authorized the execution and delivery of this Agreement to provide for the issuance from time to time of its equipment trust certificates (hereinafter called the "Certificates"), unlimited as to principal amount, to be issued to finance or refinance the debt portion (and in certain circumstances to refinance some of the equity portion) of leveraged leases of rolling stock in one or more Series, to be secured by an assignment of such rental and certain other amounts payable by the Company under such leveraged leases and by a security interest in such rolling stock, to bear such rates of interest, to mature at such times and to have such other provisions as shall from time to time be fixed as hereinafter provided;

WHEREAS, this Agreement is subject to the provisions of the Trust Indenture Act of 1939, as amended, and shall, to the extent applicable, be governed by such provisions; and

WHEREAS, all things necessary to make this Equipment Trust Agreement the legal, valid and binding obligation of the Company, for the uses and purposes herein set forth, in accordance with its terms, have been done;

NOW, THEREFORE, in consideration of the premises and mutual agreements herein contained, and other good and sufficient consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01. Definitions. For all purposes of this Agreement, all capitalized terms used herein shall have the meanings set forth in Appendix A hereto. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as in effect on the date hereof. All references in this Agreement to Articles, Sections and Exhibits refer, unless otherwise specified, to Articles, Sections and Exhibits of this Agreement. With respect to the Certificates of any Series or with respect to an Operative Document Related to such Series, "this Agreement" means this Equipment Trust Agreement as supplemented by the Related ETA Supplement.

ARTICLE 2

THE CERTIFICATES

Section 2.01. Certificates; Title and Terms. The aggregate principal amount of Certificates that may be authenticated and delivered under this Agreement is unlimited.

The Certificates may be issued in one or more Series. The following matters shall be established with respect to each Series of Certificates issued hereunder by an ETA Supplement executed and delivered by and among the Company, the Owner Trustee and the Equipment Trust Trustee:

(1) the names of the Owner Participant and Owner Trustee with respect to the Certificates of such Series;

(2) the information identifying the Lease and the Equipment Group in which an assignment and security interest is being granted to secure payment of such Series of Certificates;

(3) the title of such Series of Certificates (which shall distinguish such Series of Certificates from all other Series of Certificates), and whether such Series of Certificates consists of one or both of Serial Certificates or Installment Certificates;

(4) any limit upon the aggregate principal amount of such Series of Certificates that may be authenticated and delivered (except for Certificates authenticated and

delivered upon registration of transfer of, or in exchange for, or in lieu of, other Certificates of such Series pursuant to Section 2.03, 2.05, 2.07 or 10.04);

(5) if any Certificates of such Series are Serial Certificates, the dates on which the principal of such Certificates shall be payable;

(6) if any Certificates of such Series are Installment Certificates, the Installment Payment Percentages and Installment Payment Dates;

(7) the rate or rates at which the Certificates of such Series shall bear or accrue interest or the method by which such rate or rates shall be determined, the date or dates from which such interest shall accrue or the method by which such date or dates shall be determined, the Interest Payment Dates on which such interest shall be payable and the Record Date, if any, for the interest payable on such Certificates on each Interest Payment Date or the method by which such date or dates shall be determined, and the basis upon which interest shall be calculated if other than that of a 360-day year of twelve 30-day months;

(8) the period or periods within which, the price or prices, including the Premium, if any, at which, the timing of notice and other terms and conditions upon which Certificates of such Series may be redeemed, in whole or in part, at the option of the Company or the Related Owner Trustee, if the Company or such Owner Trustee is to have the option, including the rights, if any, of such Owner Trustee to redeem such Series of Certificates in the event of a Lease Event of Default under the Related Lease;

(9) the obligation, if any, of the Company or the Equipment Trust Trustee with respect to such Series of Certificates to redeem Certificates of such Series, and the period or periods within which or the date or dates on which, the price or prices at which, the timing of notice and other terms and conditions upon which Certificates of such Series shall be redeemed pursuant to such obligation;

(10) the limits, if any, on the transferability of such Certificates and any legend to be included on such Certificates deemed desirable by the Related Owner Trustee, the Company and the Equipment Trust Trustee;

(11) if other than the Equipment Trust Trustee, the identity of each Registrar and/or Paying Agent with respect to such Series of Certificates;

(12) the Events of Acceleration for such Series of Certificates, the remedies exercisable upon the occurrence of such Events of Acceleration, to the extent not set forth herein, and the limitations, if any, on the exercise of such remedies;

(13) whether any Certificates of such Series are to be issuable initially in temporary global form and whether any Certificates of such Series are to be issuable in permanent global form and, if so, whether beneficial owners of interests in any such permanent global Certificates may exchange such interests for Certificates of such Series of like tenor of any authorized form and denomination and the circumstances under which any such exchanges may occur, if other than in the manner provided in Section 2.05, and, if such Series of Certificates is to be issuable in the form of a global Certificate, the identity of the depository for such Series;

(14) any provisions in modification of, in addition to or in lieu of any of the provisions of Article 9;

(15) if the Certificates of such Series are to be issuable in definitive form (whether upon original issue or upon exchange of a temporary Certificate of such Series) only upon receipt of certain certificates or other documents or satisfaction of other conditions, then the form and/or terms of such certificates, documents or conditions;

(16) the agreements, if any, of the Related Owner Trustee the performance of which such Owner Trustee shall be personally liable for, as referred to in the proviso to the last paragraph of Section 2.10;

(17) the period, if any, after which amounts payable in respect of such Series of Certificates shall be distributed after a Lease Event of Default with respect to such Series of Certificates has occurred and during which such Series of Certificates could have been but were not accelerated, as such period is referred to in the proviso to clause fourth of Section 3.04;

(18) the Delivery Dates, the Funding Dates and the Commitments with respect to the Related Equipment Group;

(19) the extent, if any, to which the provisions of the Related Participation Agreement, Lease and Trust Agreement may be amended by the parties thereto without the consent of the Holders of, or only upon the consent of the Holders of a specified percentage of aggregate principal amount of, such Series of Certificates as referred to in Section 10.06;

(20) provisions with respect to the terms for which the definitions set forth in Appendix A permit or require further specification in the ETA Supplement; and

(21) any other terms, conditions, rights and preferences (or limitations on such rights or preferences) relating to such Series of Certificates (which terms shall not be inconsistent with the requirements of the Trust Indenture Act).

Section 2.02. Execution and Delivery. (a) At any time and from time to time, upon receipt of a Company Request, the Equipment Trust Trustee shall, upon receipt of an amount equal to the aggregate principal amount of Certificates to be issued, issue, execute and deliver Certificates of a Series, executed on behalf of the Equipment Trust Trustee by the manual or facsimile signature of its chairman of the board, vice chairman of the board, president, chairman of the executive committee, an executive vice president or a vice president. Each Certificate shall be dated the date of its issuance. The Equipment Trust Trustee's seal shall be reproduced on the Certificates of each such Series and shall be attested by an assistant vice president, corporate trust officer or assistant corporate trust officer or any other duly authorized officer of the Equipment Trust Trustee, whose signature shall be manual.

In issuing, executing and delivering Certificates of a Series, the Equipment Trust Trustee shall be entitled to receive (separately or in connection with the satisfaction of any conditions precedent to the delivery of Certificates of such Series as provided for in the Related Operative Documents), and (subject to Sections 315(a) through 315(d) of the Trust Indenture Act) shall be fully protected in relying upon an Opinion of Counsel of the Company stating

(A) that the form or forms of such Certificates have been established in conformity with the provisions of this Agreement; and

(B) that the terms of such Certificates have been established in conformity with the provisions of this Agreement.

The Equipment Trust Trustee shall not be required to issue, execute and deliver any such Certificates if the issue of such Certificates pursuant to this Agreement would affect the Equipment Trust Trustee's own rights, duties or immunities under the Certificates and this Agreement or otherwise in a manner that is not reasonably acceptable to the Equipment Trust Trustee.

(b) No Certificate shall be valid until executed on behalf of the Equipment Trust Trustee by the manual or facsimile signature of one of the officers of the Equipment Trust Trustee specified in the first sentence of Section 2.02(a) and the attestation of the Equipment Trust Trustee's seal by the manual signature of one of the officers of the Equipment Trust Trustee specified in the third sentence of Section 2.02(a), which shall be conclusive evidence that a Certificate has been duly executed under this Agreement. In case the officer of the Equipment Trust Trustee whose signature shall appear on a Certificate shall cease to be an officer before such Certificate shall have been issued and delivered by the Equipment Trust Trustee, or shall not have been acting in such capacity on the date of such Certificate, such Certificate shall nevertheless be as effective and binding upon the Equipment Trust Trustee as though the person who signed such Certificate had not ceased to be or had then been such officer.

(c) At any time and from time to time after the execution of any Series of Certificates, the Equipment Trust Trustee may deliver such Certificates to the Related Owner Trustee for execution of the Guaranties and such Owner Trustee shall execute the Guaranties by manual signature. Guaranties shall be executed on behalf of the Related Owner Trustee by any authorized officer or signatory of such Owner Trustee.

Section 2.03. Temporary Certificates. Until definitive Certificates are ready for delivery, the Equipment Trust Trustee may execute and issue Temporary Certificates. Temporary Certificates shall be substantially in the form of definitive Certificates but may have variations that the

Equipment Trust Trustee considers appropriate for Temporary Certificates. Every Temporary Certificate shall be executed by the Equipment Trust Trustee and registered by the Registrar upon the same conditions, and with like effect, as a definitive Certificate. The Equipment Trust Trustee shall issue definitive Certificates in exchange for Temporary Certificates without unreasonable delay.

Section 2.04. Registrar and Paying Agent. The Equipment Trust Trustee shall maintain, or cause to be maintained, an office or agency where the Certificates of each Series may be presented for registration of transfer or for exchange (in such capacity, the "Registrar") and an office or agency where (subject to Sections 2.05 and 2.09) the Certificates of each Series may be presented for payment, transfer or exchange (in such capacity, the "Paying Agent"). The Registrar shall keep a register (the "Register") with respect to each Series of Certificates and to their transfer and exchange. The Equipment Trust Trustee may appoint one or more co-registrars ("Co-Registrars") and one or more additional Paying Agents for any Series of Certificates, and the Equipment Trust Trustee may terminate the appointment of any Co-Registrar or additional Paying Agent at any time upon written notice to such Co-Registrar or Paying Agent. The term "Registrar" includes any Co-Registrar. The term "Paying Agent" includes any additional Paying Agent.

The Equipment Trust Trustee shall initially act as Registrar and Paying Agent for each Series of Certificates.

Section 2.05. Transfer and Exchange. At the option of the Holder thereof, Certificates of any Series may be exchanged for an equal aggregate principal amount of other Certificates of the same Series, maturity and interest rate and of any authorized denominations upon surrender of the Certificates to be exchanged at the principal corporate trust office of the Equipment Trust Trustee, or at any office or agency maintained for such purpose pursuant to Section 2.04. Whenever any Certificate or Certificates are so surrendered for exchange, the Equipment Trust Trustee shall execute, authenticate and deliver the replacement Certificate or Certificates and the Owner Trustee shall execute the Related Guaranty that the Holder making the exchange is entitled to receive.

Upon surrender for transfer of any Certificate at such office or agency maintained by the Equipment Trust Trustee, the Equipment Trust Trustee shall execute and deliver, in the name of the designated transferee or transferees, one or more new Certificates of the same Series, maturity and interest rate and of any authorized denomination.



All Certificates issued upon any registration of transfer or exchange of Certificates shall be the valid obligations of the Equipment Trust Trustee, evidencing the same obligations, and entitled to the same security and benefits under this Agreement, as the Certificates surrendered upon such registration of transfer or exchange.

Every Certificate presented or surrendered for registration of transfer or exchange shall be duly endorsed by, or be accompanied by a written instrument of transfer in form satisfactory to the Registrar duly executed by, the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of any Certificate, but the Registrar may require payment from the relevant Holder(s) of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Certificates, other than exchanges pursuant to Section 2.03 or 10.04 not involving any transfer, in which case the Equipment Trust Trustee shall collect such tax or charge, if any, from the Company.

The Registrar shall not be required to register the transfer of or to exchange any Certificate subject to redemption pursuant to the Related ETA Supplement.

Any transfer or exchange of any Certificate shall be in compliance with the restrictions on transfer set forth in such Certificate.

Section 2.06. Holder Lists; Ownership of Certificates. (a) The Equipment Trust Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders of Certificates of each Series. If the Equipment Trust Trustee is not the Registrar, the Registrar shall furnish (and the Company shall cause to be furnished) to the Equipment Trust Trustee with respect to each Series of Certificates promptly following each Interest Payment Date, and at such other times as the Equipment Trust Trustee may request in writing, a list, in such form and as of such date as the Equipment Trust Trustee may reasonably require, containing all the information in the possession or control of the Registrar as to the names and addresses of Holders of such Series of Certificates.

(b) Ownership of the Certificates shall be proved solely by the Register. Prior to due presentment for registration of transfer of any Certificate, the Related Owner Trustee, the Equipment Trust Trustee, the Paying Agent, the Registrar and the Company may deem and treat the Person

in whose name any Certificate is registered as the absolute owner of such Certificate for the purpose of receiving payment of principal of and Premium, if any, and (subject to Section 2.09(b)) interest on such Certificate and for all other purposes whatsoever, whether or not such Certificate shall be overdue, and none of the Related Owner Trustee, the Equipment Trust Trustee, the Paying Agent, the Registrar, the Company nor the Related Owner Participant shall be affected by notice to the contrary.

Section 2.07. Mutilated, Destroyed, Lost or Stolen Certificates. If any Certificate shall become mutilated, destroyed, lost or stolen, the Equipment Trust Trustee shall, upon the written request of the Holder of such Certificate, issue, execute and deliver in replacement thereof, a new Certificate of the same Series, payable to the same Holder in the same principal amount and of the same maturity and interest rate and dated the same date as the Certificate so mutilated, destroyed, lost or stolen. If the Certificate being replaced has become mutilated, such Certificate shall be surrendered to the Equipment Trust Trustee. If the Certificate being replaced has been destroyed, lost or stolen, the Holder of such Certificate shall furnish to the Equipment Trust Trustee such security or indemnity as may be required by it to save the Equipment Trust Trustee, the Related Equipment Trust Estate and the Related Owner Trustee harmless and evidence satisfactory to the Equipment Trust Trustee of the destruction, loss or theft of such Certificate and of the ownership thereof.

Section 2.08. Cancellation. The Registrar and any Paying Agent shall forward to the Equipment Trust Trustee for cancellation all Certificates surrendered to them for replacement, registration of transfer, exchange or payment (including through redemption). The Equipment Trust Trustee shall cancel all Certificates surrendered for replacement, registration of transfer, exchange, payment or cancellation and shall destroy cancelled Certificates.

Section 2.09. Payment on Certificates; Defaulted Interest. (a) The Equipment Trust Trustee will arrange directly with any Paying Agent for the payment, or the Equipment Trust Trustee will, subject to and upon receipt of the funds necessary therefor, make payment, all pursuant to Section 2.10, of the principal of and Premium, if any, and interest on each Certificate. Payment on each Serial Certificate and each Installment Certificate in respect of interest, and payment on each Installment Certificate in respect of Installment Principal Payments (other than the final Installment Principal Payment) shall be paid in U.S. currency on each Interest Payment Date or Installment Payment

Date (other than the final Installment Payment Date), as the case may be, to the Holder thereof at the close of business on the relevant Record Date at the principal corporate trust office of the Equipment Trust Trustee or at the office of the Paying Agent maintained for such purpose pursuant to Section 2.04; provided that the Equipment Trust Trustee or the Paying Agent may, at its option, pay any such amount by check mailed to such Holder's address as it appears on the Register; provided further that if an arrangement as contemplated by this Agreement ceases to exist between the Company and a Clearing Agency, the Equipment Trust Trustee or the Paying Agent will pay, or cause to be paid, if so requested by any Holder by written notice to the Equipment Trust Trustee, any such amount by transferring such amount by wire in immediately available funds to an account maintained by such Holder with a bank in the United States. Payment (including through redemption) in full of the principal of, and of any Premium payable in connection with, any Certificate shall be payable only against presentation and surrender thereof at the principal corporate trust office of the Equipment Trust Trustee or at the office of the Paying Agent maintained for such purpose pursuant to Section 2.04.

No Holder shall have any further interest in, or other right with respect to, the Related Equipment Trust Estate when and if the principal amount of and interest and Premium, if any, on all Related Certificates registered in the name of such Holder and all other sums payable to such Holder, as a holder of Certificates of such Series, hereunder, under such Certificates and under the Related Participation Agreement shall have been paid in full or duly provided for in accordance with Section 9.01.

(b) Any interest payable on any Certificate that is not punctually paid or duly provided for on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder thereof on the relevant Record Date by virtue of his having been the Holder thereof on such date; and such Defaulted Interest may be paid by the Equipment Trust Trustee, at its election in each case, as provided in clause (1) or (2) below:

(1) The Equipment Trust Trustee may elect to make payment of any Defaulted Interest to the Holders as determined at the close of business on a special record date for the payment of such Defaulted Interest, which shall be fixed in the following manner: the Equipment Trust Trustee shall notify the Paying Agent in writing of

the amount of Defaulted Interest proposed to be paid on each Certificate and the date of the proposed payment, and at the same time the Equipment Trust Trustee shall make arrangements to set aside an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest, prior to the date of the proposed payment, to be held in trust for the benefit of the Holders entitled to such Defaulted Interest as this clause provides and shall fix a special record date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment. The Equipment Trust Trustee shall promptly notify the Related Owner Trustee and the Registrar (with a copy to the Company) of such special record date and shall cause notice of the proposed payment of such Defaulted Interest and the special record date therefor to be mailed, first class postage prepaid, to each Holder at his address as it appears in the Register, not less than 10 days prior to such special record date. Notice of the proposed payment of such Defaulted Interest and the special record date therefor having been mailed, as aforesaid, such Defaulted Interest shall be paid to the Holders on such special record date and shall no longer be payable pursuant to the following clause (2).

(2) In the event that the Equipment Trust Trustee shall not have elected to make payment of Defaulted Interest pursuant to the foregoing clause (1), the Equipment Trust Trustee may make, or cause to be made, payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Related Series of Certificates may be listed, and upon such notice as may be required by such exchange, if such manner of payment shall be deemed practicable by the Equipment Trust Trustee.

(c) The Equipment Trust Trustee shall require each Paying Agent to agree in writing that such Paying Agent will hold in trust, for the benefit of Holders of a Series of Certificates or the Equipment Trust Trustee, all money held by the Paying Agent for the payment of the principal of or Premium, if any, or interest on such Series of Certificates, and shall give to the Equipment Trust Trustee notice of any default in the making of any such payment by the Owner Trustee. The Equipment Trust Trustee at any time may require a Paying Agent to repay all money held by it to the Equipment Trust Trustee. Upon so doing the Paying Agent shall have no further liability for the money so paid.

Section 2.10. Payment from Estate Only. All amounts payable by the Equipment Trust Trustee and the Related Owner Trustee under a Series of Certificates, the Related Guaranties, this Agreement and the Related ETA Supplement shall be made only from the income and proceeds of the Related Equipment Trust Estate. Notwithstanding any provisions of this Agreement to the contrary (but subject to the obligations and duties of the Equipment Trust Trustee under Article 8), the Equipment Trust Trustee shall not be personally liable for any amounts payable under a Certificate. By its acceptance of a Certificate of any Series, each Holder agrees that (a) it will look solely to the income and proceeds of the Related Equipment Trust Estate for the payment of such amounts, to the extent available for distribution to such Holder as herein provided, and (b) none of the Related Owner Trustee either in its individual capacity or as trustee, the Related Owner Participant or the Equipment Trust Trustee is or shall be personally liable to any Holder of a Certificate of such Series (1) for any amount payable under a Certificate of such Series, the Guaranty endorsed thereon, this Agreement or the Related ETA Supplement or (2) except as expressly provided in this Agreement and such ETA Supplement in the case of the Related Owner Trustee, either in its individual capacity or as trustee, and the Equipment Trust Trustee, for any liability thereunder.

Each of the Equipment Trust Trustee and each Holder, by its acceptance of a Certificate, hereby irrevocably agrees, to the maximum extent permitted by law, that, in any case in which any Person (other than the Company alone) is the debtor or one of the debtors under the United States Bankruptcy Code of 1978, as amended (the "Bankruptcy Code"), each of the Equipment Trust Trustee and each such Holder shall be deemed to have made a timely election pursuant to Section 1111(b)(1)(A)(i) of the Bankruptcy Code (or any substantially comparable provision which is the successor thereto) as to the Related Equipment Trust Estate (which is acknowledged and agreed not to include Excluded Payments).

It is understood and agreed that each Owner Trustee shall enter into the Related ETA Supplement and execute the Related Guaranties solely as Owner Trustee under the Related Trust Agreement and not in its individual capacity except as otherwise expressly provided herein, and in no case whatsoever shall any Owner Trustee (or any entity acting as successor trustee under the Related Trust Agreement), except as otherwise expressly provided herein, be personally liable for, or for any loss in respect of, any statements,

representations, warranties, agreements or obligations hereunder or thereunder not expressly made in its individual capacity; provided that each Owner Trustee shall be liable under the Related ETA Supplement and Guaranties in its individual capacity (i) for the performance of its agreements under subsections of the Related ETA Supplement that expressly provide that such Owner Trustee will be so liable and (ii) for its own willful misconduct or gross negligence. If a successor Owner Trustee is appointed in accordance with the terms of a Trust Agreement, such successor Owner Trustee shall, without any further act, succeed to all of the rights, duties, immunities and obligations hereunder, and its predecessor Owner Trustee shall be released from all further duties and obligations hereunder, without prejudice to any claims against such predecessor Owner Trustee for any default by such predecessor Owner Trustee in the performance of its obligations under the Related ETA Supplement prior to such appointment.

Section 2.11. Guaranties of Owner Trustee. Each ETA Supplement shall provide that the Related Owner Trustee, solely in its capacity as trustee, covenants, agrees and guarantees that each Holder of a Certificate of the Related Series shall receive the principal amount of and Premium, if any, on its Certificates in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, when and as the same shall become due and payable (whether at stated maturity or otherwise), in accordance with the provisions thereof or of such ETA Supplement, and shall receive interest thereon in like money at the rate specified therein, at the times and places and otherwise as expressed in the Certificates, together with all other amounts due hereunder. Each ETA Supplement shall further provide that the Related Owner Trustee covenants and agrees to endorse upon each of the Certificates of the Related Series, at or before the issuance and delivery thereof by the Equipment Trust Trustee, its Guaranty of the prompt payment of the principal thereof and Premium, if any, and interest thereon. Each such Guaranty (i) shall be absolute and unconditional and not in any way conditioned or contingent upon the validity or enforceability of the obligations of the Related Owner Trustee to pay ETA Rent pursuant to Section 5.03, and shall not be affected by any circumstances, including, without limitation, those specified in Section 5.04; and (ii) shall be a present and continuing guaranty of payment and not of collectibility and shall be in no way conditioned or contingent upon any attempt to collect from the Equipment Trust Trustee or to realize upon any security provided

therefor, or upon any other condition or contingency; provided that the obligations of an Owner Trustee under any such Related Guaranty shall be discharged to the extent of any ETA Rent paid by such Owner Trustee or any Rent received by the Equipment Trust Trustee in respect of the Related Series of Certificates pursuant to any assignment thereof under the Related ETA Supplement. Any such Guaranty so endorsed shall be signed in the name and on behalf of the Related Owner Trustee by the facsimile signature of a Responsible Officer of such Owner Trustee, provided that no such Guaranty shall be effective with respect to any Certificate unless such Certificate shall have been duly executed on behalf of the Equipment Trust Trustee as provided in Section 2.02. In case any officer of the Related Owner Trustee whose signature shall appear on any such Guaranty shall cease to be such officer before the Certificate to which such Guaranty relates shall have been issued and delivered by the Equipment Trust Trustee, or shall not have been acting in such capacity on the date of such Certificate, such Guaranty shall nevertheless be as effective and binding upon the Related Owner Trustee as though the person who signed such Guaranty had not ceased to be or had then been such officer.

Section 2.12. Withholding. The Equipment Trust Trustee shall make any deduction required by law from any payment to any Holder hereunder for any withholding of taxes imposed by the United States. The Equipment Trust Trustee shall obtain a tax receipt with respect to any such withholding of taxes and shall furnish a report of such withholding by January 31 of each year to such Holder after the Equipment Trust Trustee has received such receipt.

Section 2.13. Book-Entry and Definitive Certificates. (a) The original Certificates of a Series may be issued in the form of one or more typewritten Certificates representing the Book-Entry Certificates, to be delivered in the manner provided for in a Letter of Representations to DTC, the initial Clearing Agency, by, or on behalf of, the Company. In each such case, the Certificates delivered to DTC shall initially be registered on the Register in the name of Cede & Co., the nominee of the initial Clearing Agency, and a Certificate Owner will only receive a definitive certificate representing such Certificate Owner's interest in such Certificates as provided above and in subsection (d) below. Unless and until definitive, fully registered Certificates of a Series (the "Definitive Certificates") have been issued pursuant to subsection (d) below:

(i) the provisions of this Section 2.13 shall be in full force and effect;

(ii) the Company, the Paying Agent, the Registrar and the Equipment Trust Trustee may deal with the Clearing Agency for all purposes (including the making of distributions on such Certificates) as the authorized representative of the Certificate Owners;

(iii) to the extent that the provisions of this Section 2.13 conflict with any other provisions of this Agreement, the provisions of this Section 2.13 shall control;

(iv) the rights of Certificate Owners shall be exercised only through the Clearing Agency and shall be limited to those established by law and agreements between such Certificate Owners and the Clearing Agency Participants; and until Definitive Certificates of such Series are issued pursuant to subsection (d) below, the Clearing Agency will make book-entry transfers among the Clearing Agency Participants and receive and transmit distributions of principal of and interest and Premium, if any, on the Certificates to such Clearing Agency Participants; and

(v) whenever this Agreement requires or permits actions to be taken based upon instructions or directions of Holders holding a specified percentage in principal amount of Outstanding Certificates of such Series, the Clearing Agency shall be deemed to represent such percentage only to the extent that it has received instructions to such effect from Certificate Owners and/or Clearing Agency Participants owning or representing, respectively, such required percentage in principal amount of Outstanding Certificates of such Series and has delivered such instructions to the Equipment Trust Trustee. The Equipment Trust Trustee shall have no obligation to determine whether the Clearing Agency has in fact received any such instructions.

(b) Whenever notice or other communication to the Holders of Certificates of a Series is required under this Agreement, unless and until Definitive Certificates with respect to such Series shall have been issued pursuant to subsection (d) below, the Equipment Trust Trustee shall give all such notices and communications specified herein to be given to Holders of Certificates of such Series to the Clearing Agency and/or the Clearing Agency Participants with respect to such Series, and shall make available additional copies as requested by such Clearing Agency Participants.



(c) With respect to each Series of Certificates, unless and until Definitive Certificates with respect to such Series are issued pursuant to subsection (d) below, on the Record Date prior to each Interest Payment Date, the Special Distribution Date, or on any special record date as provided in Section 2.09(b), the Equipment Trust Trustee will request from the Clearing Agency a securities position listing (or comparable document) setting forth the names of all Clearing Agency Participants reflected on the Clearing Agency's books as holding interests in the Certificates on such Record Date. The Equipment Trust Trustee will mail to each such Clearing Agency Participant the statements described in Section 3.10.

(d) With respect to each Series of Certificates, if (i) a Certificate Owner transfers its interest to a Person for whom the Clearing Agency is ineligible to act in accordance with the rules and regulations of the Clearing Agency, as such rules and regulations may from time to time be amended (any such Person being an "Ineligible Transferee"), (ii) the Company advises the Equipment Trust Trustee in writing that the Clearing Agency is no longer willing or able to discharge properly its responsibilities and the Equipment Trust Trustee or the Company is unable to locate a qualified successor, (iii) the Company, at its option, advises the Equipment Trust Trustee in writing that the Company elects to terminate the book-entry system through the Clearing Agency or (iv) after the occurrence of an Event of Acceleration with respect to such Series, Certificate Owners holding not less than a majority in principal amount of Outstanding Certificates of such Series held by Certificate Owners advise the Equipment Trust Trustee and the Clearing Agency through the Clearing Agency Participants in writing that the continuation of a book-entry system through the Clearing Agency is no longer in the best interests of the Certificate Owners, then (A) in the case of (i) above, the Equipment Trust Trustee shall (1) cancel the Certificate registered in the name of Cede & Co., (2) complete the procedures specified in the Letter of Representations and (3) issue, authenticate and deliver a Definitive Certificate of the same Series in the name of the Ineligible Transferee as provided in Sections 2.01 and 2.02 in an authorized denomination equal to the Ineligible Transferee's aggregate principal amount and shall authenticate and deliver a new Certificate of such Series registered in the name of Cede & Co. equal in amount to the aggregate principal amount of the surrendered Certificate reduced by the aggregate principal amount transferred to such Ineligible Transferee; (B) in the case of (ii) and (iii) above, the Equipment Trust Trustee

(ii) In the event that the Ineligible Transferee subsequently transfers its Definitive Certificate to another Ineligible Transferee, the Equipment Trust Trustee shall effect such transfer in accordance with Section 2.05.

(f) The Equipment Trust Trustee shall enter into a Letter of Representations with respect to each Series of Certificates and fulfill its responsibilities thereunder.

### ARTICLE 3

#### RECEIPT, DISTRIBUTION AND APPLICATION OF FUNDS IN THE EQUIPMENT TRUST ESTATE

Section 3.01. Application of Proceeds of Initial Issuance of Certificates. Promptly upon receipt of the proceeds from the sale of any Series of Certificates, the Equipment Trust Trustee shall deposit such proceeds ("Deposited Cash") in an account to be held as part of the Related Equipment Trust Estate, and to be invested as provided in Section 8.04 and applied and distributed as provided in this Article 3. On each Funding Date of an Item of Equipment Related to such Series of Certificates, subject to fulfillment to the satisfaction of or waiver by the Equipment Trust Trustee of all conditions specified for such Funding Date in the Related Participation Agreement, the Equipment Trust Trustee, on behalf of the Related Owner Trustee, shall apply an amount equal to the Commitment of the Equipment Trust Trustee for such Item of Equipment, together with the Commitment received from the Related Owner Participant pursuant to the Related Participation Agreement, to the acquisition of title to such Item of Equipment in accordance with the Related Participation Agreement.

Section 3.02. Payment in Case of Redemption. In the event all or any part of the Certificates of any Series are to be redeemed in accordance with the provisions of the Related ETA Supplement, the Equipment Trust Trustee will hold any amount received by it in anticipation of such redemption in accordance with Section 8.04 and apply such amount, together with the Investment Proceeds, if any, on the Redemption Date in the following order of priority:

first, so much of such aggregate amount as shall be required to pay the Equipment Trust Trustee all amounts then due it pursuant to the Related Participation Agreement shall be applied to pay the Equipment Trust Trustee such amounts;

second, subject to Section 3.07, so much of such aggregate amount remaining as shall be required to pay the principal of and interest and Premium, if any, on the Outstanding Certificates of such Series pursuant to the Related ETA Supplement on the Redemption Date shall be applied to the redemption of the Certificates of such Series on the Redemption Date; and

third, the balance, if any, of such aggregate amount remaining shall be distributed to the Related Owner Trustee.

Section 3.03. Application of Rent When No Event of Acceleration Is Continuing. Except as otherwise provided in Section 3.02 or 3.04, with respect to each Series of Certificates each amount of ETA Rent and Rent received by the Equipment Trust Trustee with respect to such Series, together with any amount received by the Equipment Trust Trustee pursuant to Section 7.03(e) and the Investment Proceeds, if any, with respect to such Series shall be distributed by the Equipment Trust Trustee in the following order of priority:

first, subject to Section 3.07, so much of such aggregate amount as shall be required to pay in full the principal of and interest then due on all Outstanding Certificates of such Series shall be applied to pay such principal and interest;

second, any amount due the Equipment Trust Trustee pursuant to the Related Participation Agreement shall be paid to the Equipment Trust Trustee; and

third, the balance, if any, of such aggregate amount remaining thereafter shall be distributed to the Related Owner Trustee.

Section 3.04. Payments During Continuance of Event of Acceleration. All payments received and amounts held or realized by the Equipment Trust Trustee with respect to any Series of Certificates after an Event of Acceleration with respect to such Series of Certificates shall have occurred and be continuing (including any amounts realized by the Equipment Trust Trustee from the exercise of any remedies pursuant to Article 7), as well as all payments or amounts then held or thereafter received by the Equipment Trust Trustee as part of the Related Equipment Trust Estate while such Event of Acceleration shall be continuing, shall be distributed by the Equipment Trust Trustee in the following order of priority:

first, so much of such payments or amounts as shall be required to pay the Equipment Trust Trustee all amounts then due it pursuant to the Related Participation Agreement shall be applied to pay the Equipment Trust Trustee such amounts;

second, so much of such payments or amounts remaining as shall be required to pay the expenses incurred, or in the reasonable judgment of the Equipment Trust Trustee expected to be incurred, in using, operating, storing, leasing, controlling or managing the Related Equipment Trust Estate, and in making all maintenance, insurance, repairs, replacements, alterations, additions and improvements thereto and in making all payments that the Equipment Trust Trustee may be required or may elect to make, if any, for taxes, assessments, insurance or other proper charges upon the Related Equipment Trust Estate or any part thereof (including the employment of engineers and accountants to examine and make reports upon the properties, books and records of the Company and the Related Owner Trustee), all in accordance with Section 7.03(c);

third, subject to Section 3.07, so much of such payments or amounts remaining as shall be required to pay the principal of and accrued interest and Premium, if any, on all Outstanding Certificates of such Series then due and payable, whether by redemption pursuant to the Related ETA Supplement, by declaration of acceleration pursuant to Section 7.02 or otherwise, shall be applied ratably to the payment of such principal, interest and Premium; and in case such payments or amounts shall be insufficient to pay in full the whole amount so due and unpaid, then to the payment of such principal, interest and Premium, without any preference or priority of one Certificate of such Series over another, ratably according to the aggregate amount so due for principal, interest and Premium, at the date fixed by the Equipment Trust Trustee for the distribution of such payments or amounts; and

fourth, the balance, if any, of such payments or amounts remaining thereafter shall be held by the Equipment Trust Trustee as collateral security for the obligations secured hereby until such time as no Event of Acceleration with respect to such Series shall be continuing hereunder or such Series of Certificates has been accelerated and all amounts due thereon have been paid, at which time such payments or amounts shall be distributed to the Related Owner Trustee; provided, that

at such time as one or more Events of Default under the Related Lease shall have occurred and any such Event of Default shall have continued for a period of 180 days during which time such Series of Certificates shall not have been accelerated pursuant to Section 7.02, such amounts shall be distributed to the Related Owner Trustee for distribution in accordance with the provisions of the Related Lease, Participation Agreement and Trust Agreement so long as no Event of Acceleration exists other than by virtue of such Event or Events of Default.

Section 3.05. Payments for Which Application Is Provided in Other Documents. Except as otherwise provided in this Agreement or the Related ETA Supplement, any payments received by the Equipment Trust Trustee for which provision as to the application thereof is made in the Related Lease or Participation Agreement shall be applied by the Equipment Trust Trustee in accordance with the provisions of such Related Lease or Participation Agreement, as applicable.

Section 3.06. Payments for Which No Application Is Otherwise Provided. Except as provided in Section 3.04:

(a) any payments received by the Equipment Trust Trustee for which no provision as to the application thereof is made elsewhere in this Agreement or the Related ETA Supplement, and

(b) any payments received and amounts realized by the Equipment Trust Trustee with respect to an Item of Equipment to the extent received or realized at any time after the satisfaction of conditions set forth in Section 9.01, as well as any other amounts remaining as part of the Related Equipment Trust Estate after such satisfaction,

shall be distributed by the Equipment Trust Trustee in the following order of priority:

first, so much of such aggregate amount as shall be required to pay the Equipment Trust Trustee all amounts then due it pursuant to the Related Participation Agreement shall be applied to pay the Equipment Trust Trustee such amounts; and

second, the balance, if any, of such aggregate amount remaining thereafter shall be distributed to the Related Owner Trustee.

Section 3.07. Order of Application of Payments. Each payment on any Certificate shall be applied, first, to the payment of accrued interest (including interest on overdue principal and, to the extent permitted by Applicable Law, overdue interest) on such Certificate to the date of such payment and, second, to the payment of the principal of, and the Premium, if any, on, such Certificate then due (including any overdue installments of principal) thereunder.

Section 3.08. Subrogation. To the extent that any payments received or amounts realized are applied under this Article 3 to pay the Equipment Trust Trustee any amounts then due it pursuant to any Participation Agreement, the Related Owner Trustee shall be subrogated to the extent of such payment to the rights and remedies of the Equipment Trust Trustee in respect thereof.

Section 3.09. Excluded Payments. The Equipment Trust Trustee shall deliver any Excluded Payments received by it to whosoever is lawfully entitled to the same.

Section 3.10. Statements to Holders. (a) With respect to each Series of Certificates, on each Interest Payment Date and on the Special Distribution Date, the Equipment Trust Trustee will include with each distribution to Holders of such Series of Certificates a statement, giving effect to such distribution to be made on such date, setting forth the following information (per a \$1,000 face amount Certificate of such Series as to (i) and (ii) below):

(i). the amount of such distribution allocable to principal, if any, and the amount allocable to Premium, if any; and

(ii) the amount of such distribution allocable to interest.

(b) Within a reasonable period of time after the end of each calendar year but not later than the latest date permitted by law, the Equipment Trust Trustee shall furnish to each Person who at any time during such calendar year was a Holder of record a statement containing the sum of the amounts determined pursuant to clauses (a)(i) and (a)(ii) with respect to the Related Equipment Trust Estate for such calendar year or, in the event such Person was a Holder of record during a portion of such calendar year, for the applicable portion of such year, and such other items as are readily available to the Equipment Trust Trustee and which a Holder shall reasonably request as necessary for the purpose of such Holder's preparation of its Federal income tax returns.

ARTICLE 4

LEASE OF ITEMS OF EQUIPMENT BY OWNER TRUSTEE TO THE COMPANY

Section 4.01. Agreement to Lease. Each ETA Supplement shall provide that each of the Equipment Trust Trustee and the Related Owner Trustee agrees that simultaneously with the purchase and acceptance of each Item of Equipment Related to such Series of Certificates by the Equipment Trust Trustee and the lease thereof to the Related Owner Trustee pursuant to Section 5.01, the Related Owner Trustee will lease such Item of Equipment to the Company pursuant to the Related Lease.

Section 4.02. Disposition and Release of Property Included in the Equipment Trust Estate During Continuation of Lease. So long as a Lease is in effect, at any time and from time to time, subject to the applicable provisions of Article 12, part of the Related Equipment Trust Estate may be sold or disposed of in accordance with the provisions of this Agreement and such Lease. The Equipment Trust Trustee shall (except (i) as otherwise permitted by Section 8.04(b) or (ii) as otherwise required hereunder), from time to time, release any part of any Equipment Trust Estate from the Lien of this Agreement, but only upon fulfillment to the satisfaction of or waiver by the Equipment Trust Trustee of all conditions specified under the applicable sections of the Related Lease permitting such release and upon receipt by, or deposit with, the Equipment Trust Trustee of the following:

(1) an Owner Trustee Request requesting such release, describing the property so to be released;

(2) an Officer's Certificate of the Company, dated not more than 30 days prior to the date of the application for such release, stating:

(i) that the release will not be inconsistent with any of the provisions of this Agreement, and that such property is required or permitted to be so sold or disposed of pursuant to such Lease and the provisions of this Agreement and that all conditions precedent herein and in such Lease provided for relating to such release have been complied with; and

(ii) that no Event of Default under such Lease has occurred that has not been cured;

(3) in the case of any release of an Item of Equipment as to which an Event of Loss has occurred, the amount required by clause (b) of Article 11;

(4) in the case of any release of an Item of Equipment as a result of the termination of such Lease with respect thereto as a result of a declaration of obsolescence or surplus;

(5) in the case of any release of an Item of Equipment as a result of the termination of such Lease with respect thereto following the Company's exercise of an early purchase option contained therein, the amount required by clause (c) of Article 11; and

(6) an Opinion of Counsel of the Company stating that the certificates, opinions and other instruments which have been or are therewith delivered to and deposited with the Equipment Trust Trustee pursuant to this Section 4.02 and such Lease conform to the requirements of this Agreement and such Lease and that, upon the basis of such application, the property so sold or disposed of may be lawfully released from the Lien of this Agreement, and that all conditions precedent herein provided for relating to such release have been complied with.

## ARTICLE 5

### LEASE OF ITEMS OF EQUIPMENT BY EQUIPMENT TRUST TRUSTEE TO OWNER TRUSTEE

Section 5.01. Agreement to Lease. Each ETA Supplement shall provide that the Equipment Trust Trustee agrees that it will, simultaneously with the acquisition of each Related Item of Equipment by the Equipment Trust Trustee on each Delivery Date, lease such Item of Equipment to the Related Owner Trustee under this Agreement, and the Related Owner Trustee agrees that it will, simultaneously with such purchase and acceptance by the Equipment Trust Trustee, lease each such Item of Equipment from the Equipment Trust Trustee under this Agreement, such lease to be upon the terms set



forth in this Agreement. Such lease shall be a lease in legal form only and shall convey all ownership rights in each such Item of Equipment to such Owner Trustee subject only to the rights of the Equipment Trust Trustee as holder of legal title for security purposes only hereunder.

Section 5.02. Term of ETA Lease. The term of the lease of each Item of Equipment hereunder (the "ETA Lease Term") shall commence on the Delivery Date (as defined in the Related Release) thereof and shall expire on the Basic Lease Termination Date (as defined in the Related Lease), or such earlier date as this Agreement shall have been satisfied and discharged with respect to the Related Series of Certificates pursuant to subsection (i) or (ii) of Section 9.01(a). Upon the expiration of the ETA Lease Term applicable thereto,

(i) subject to the provisions of Article 3, any monies remaining in the hands of the Equipment Trust Trustee with respect to such Series of Certificates after payment in full of or provision for all ETA Rent payable hereunder shall be paid to the Related Owner Trustee;

(ii) legal title to such Item of Equipment shall vest in the Related Owner Trustee or in such designee of the Related Owner Trustee as the Related Owner Trustee shall have specified in a notice furnished to the Equipment Trust Trustee not later than ten Business Days prior to such expiration;

(iii) the Equipment Trust Trustee shall execute for recordation in public offices, at the expense of the Related Owner Trustee or such designee, such instrument or instruments in writing as the Related Owner Trustee or such designee shall reasonably request and as shall be reasonably acceptable to the Equipment Trust Trustee in order to make clear upon public records the title of the Related Owner Trustee or such designee to such Item of Equipment under the laws of any jurisdiction; and

(iv) the Equipment Trust Trustee shall execute and deliver to the Related Owner Trustee an instrument releasing its Lien in and to such Item of Equipment and all other property then remaining in the Related Equipment Trust Estate, and shall execute for recordation in public offices, at the expense of the Related Owner Trustee or such designee, such instruments in writing as the Related Owner Trustee or such designee shall reasonably request and as shall be reasonably acceptable

to the Equipment Trust Trustee in order to make clear upon public records that such Lien has been released with respect to the Related Equipment Trust Estate under the laws of any jurisdiction;

provided that, until expiration of the ETA Lease Term applicable thereto, legal title to such Item of Equipment shall not pass to or vest in the Related Owner Trustee or in any such designee, but shall be and remain in the Equipment Trust Trustee for security purposes, notwithstanding the delivery of such Item of Equipment to the Related Owner Trustee pursuant to the lease of such Item of Equipment hereunder or the delivery to and the possession and use thereof by the Company pursuant to the Related Lease. Each ETA Supplement shall provide that the Owner Trustee thereunder, for itself and any such designee, waives and releases any and all rights existing or that may be acquired to any penalties, forfeit or damages from or against the Equipment Trust Trustee for failure to execute and deliver any bill or bills of sale or to file any certificate of payments in compliance with any law or statute requiring the filing of the same, except for failure by the Equipment Trust Trustee to execute and deliver any quitclaim bill or bills of sale or to file any certificate as may be specifically requested in writing by such Owner Trustee or any such designee.

Notwithstanding anything herein to the contrary, the holding by the Equipment Trust Trustee of legal title to any such Item of Equipment is for security purposes only, and the parties hereto agree that for all other purposes, including tax purposes, the Related Owner Trustee shall be the owner of such Item of Equipment.

Section 5.03. ETA Rent. With respect to each Series of Certificates, as rental for each Item of Equipment during the ETA Lease Term applicable thereto, the Related Owner Trustee shall pay or cause to be paid to the Equipment Trust Trustee at its corporate trust office, in funds consisting of lawful currency of the United States of America, the following amounts ("ETA Rent"):

(a) on the Funding Date applicable to such Item of Equipment, an amount equal to the Owner Participant's Commitment for such Item of Equipment; and

(b) not later than 11:30 A.M., New York City time, on the date on which any payment of interest (including any interest on overdue principal), Premium, if any, upon

redemption pursuant to the Related ETA Supplement, or principal is due under any Certificates (whether upon redemption, final maturity, acceleration or otherwise), an amount sufficient to pay the aggregate amount of such interest, Premium, principal or payment in accordance with the terms of such Certificates and of this Agreement.

As additional rental, each Owner Trustee shall pay or cause to be paid to the Equipment Trust Trustee or to any Holder entitled thereto, when due, any other amounts that such Owner Trustee has agreed in the Related ETA Supplement to pay to the Equipment Trust Trustee or to such Holder.

All payments of ETA Rent to be made by any Owner Trustee to the Equipment Trust Trustee shall be made by wire transfer of immediately available funds to the Corporate Trust Administration Department of the Equipment Trust Trustee at Rodney Square North, Wilmington, Delaware 19890, specifying the applicable Series, for credit to such account as the Equipment Trust Trustee shall specify.

Notwithstanding any provision to the contrary, all amounts of Rent received by the Equipment Trust Trustee pursuant to any assignment thereof under the Related ETA Supplement shall to the extent thereof release the Related Owner Trustee from its obligation to pay ETA Rent in the same amount hereunder.

Notwithstanding any provision hereof to the contrary, the parties hereto agree that for income tax purposes (i) all payments of ETA Rent payable pursuant to Section 5.03(b) shall be reported as interest or principal, as the case may be, on a loan from the Holders of such Series of Certificates to the Related Owner Trustee in accordance (in the case of ETA Rent payable under Section 5.03(b) exclusive of Premium, if any, which amount shall be reported as interest) with the ETA Rent Schedule contained in the Related ETA Supplement and (ii) each Certificate of a Series is intended to represent an interest in the ETA Rent Related to such Series, as set forth in such ETA Rent Schedule.

Section 5.04. No Setoff, Counterclaim, Etc. The lease hereunder of each Item of Equipment is a net lease and each Owner Trustee's obligation to pay all ETA Rent payable hereunder and under the Related ETA Supplement shall, subject, so long as the Related Lease is in effect, to the penultimate paragraph of Section 5.03, be absolute and unconditional and shall not be affected by any circumstances of any character, including, without limitation, (a) any setoff, counterclaim, recoupment, defense or other right that

such Owner Trustee or the Company may have against the Equipment Trust Trustee or anyone else for any reason whatsoever, (b) any defect in the title, condition, design, operation or fitness for use of, or any damage to or loss or destruction of, any Item of Equipment, or any interruption or cessation in or prohibition of the use or possession thereof by the Related Owner Trustee or the Company for any reason whatsoever, (c) any insolvency, bankruptcy, reorganization or similar proceedings by or against the Related Owner Trustee or the Equipment Trust Trustee or (d) any other circumstance, happening or event whatsoever, whether or not unforeseen or similar to any of the foregoing. Each ETA Supplement shall provide that, if for any reason whatsoever the lease of such Item of Equipment hereunder shall be terminated in whole or in part by operation of law or otherwise except as specifically provided herein, the Related Owner Trustee nonetheless agrees to pay to the Equipment Trust Trustee an amount equal to each ETA Rent payment under Section 5.03 at the time such payment would have become due and payable in accordance with the terms hereof had the lease of such Item of Equipment hereunder not been terminated in whole or in part. Each ETA Supplement shall provide that the Owner Trustee thereunder waives, to the extent permitted by Applicable Law, any and all rights that it may then have or that at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of such Item of Equipment hereunder except in accordance with the express terms hereof or under the Related ETA Supplement. Each ETA Supplement shall provide that each payment of ETA Rent made by the Owner Trustee thereunder shall be final as to the Equipment Trust Trustee and such Owner Trustee, and such Owner Trustee will not seek to recover all or any part of any such payment of ETA Rent from the Equipment Trust Trustee for any reason whatsoever.

Notwithstanding any other provision in this Section 5.04 to the contrary, an Owner Trustee shall not be impaired in the exercise of any right it may have to assert and sue upon any claim it may have against the Company or the Equipment Trust Trustee in a separate action.

Section 5.05. Equipment Trust Trustee  
Representations and Warranties. THE EQUIPMENT TRUST TRUSTEE (EITHER IN ITS INDIVIDUAL CAPACITY OR AS EQUIPMENT TRUST TRUSTEE) HAS NOT MADE AND SHALL NOT BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, VALUE, CONDITION, WORKMANSHIP, DESIGN, PATENT INFRINGEMENT, OPERATION, MERCHANTABILITY, COMPLIANCE WITH SPECIFICATIONS, CONSTRUCTION, PERFORMANCE, FITNESS FOR USE OF

ANY ITEM OF EQUIPMENT OR ANY PART THEREOF OR AS TO THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, AS TO THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT, OR AS TO THE ABSENCE OF OBLIGATIONS BASED ON STRICT LIABILITY IN TORT OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY ITEM OF EQUIPMENT OR ANY PART THEREOF OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY ITEM OF EQUIPMENT OR ANY PART THEREOF, except that the Equipment Trust Trustee in its individual capacity warrants that on the Delivery Date of an Item of Equipment (a) the Equipment Trust Trustee shall have received whatever title to such Item of Equipment was conveyed to it on such Delivery Date pursuant to the Related Participation Agreement, and (b) such Item of Equipment shall be free of Trustee's Liens attributable to it in its individual capacity.

Section 5.06. Assumption of Obligations of Owner Trustee by Lessee. In the event that the Company shall have the option, as provided in the Related Lease or Participation Agreement, to assume all of the rights and obligations of the Related Owner Trustee under the Related ETA Supplement in connection with the purchase by the Company of some or all of the Related Items of Equipment (including but not limited to all obligations under each Related Guaranty) pursuant to the Related Participation Agreement and if, on or prior to the date (the "Special Date") on which the Company is to consummate (i) such assumption or (ii) the purchase that permits such assumption:

(a) the Company shall have delivered to the Equipment Trust Trustee an Officer's Certificate, dated the Special Date, stating that the Company has paid to the Related Owner Trustee all amounts required to be paid to such Owner Trustee pursuant to the Related Lease or all amounts to be paid to the Related Owner Participant pursuant to the Related Participation Agreement, as the case may be, in connection with such purchase and assumption;

(b) no ETA Default or Event of Acceleration with respect to such Series of Certificates after giving effect to the supplement delivered pursuant to clause (e) below shall have occurred and be continuing immediately subsequent to such assumption and the Equipment Trust Trustee shall have received from the Company an Officer's Certificate, dated the Special Date, to such effect;

(c) the Equipment Trust Trustee shall have received, on or prior to the Special Date, evidence of all filings, recordings and other action referred to in the Opinion or Opinions of Counsel referred to below;

(d) the Equipment Trust Trustee shall have received an Opinion or Opinions of Counsel for the Company, dated the Special Date, which without unusual qualification shall be to the effect that, after giving effect to the supplement referred to in clause (e) below:

(i) this Agreement constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and by general principles of equity, and except as limited by applicable laws which may affect the remedies provided for in this Agreement, which laws, however, do not in the opinion of such counsel make the remedies provided for in this Agreement inadequate for the practical realization of the rights and benefits provided for in this Agreement;

(ii) each Related Guaranty constitutes the legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and by general principles of equity;

(iii) the Lien of this Agreement on all Items of Equipment in the Related Equipment Group constitutes a fully-perfected Lien and all filing, recording or other action (specifying the same) necessary to perfect and protect the Lien of this Agreement with respect to such Equipment Group has been accomplished; and

(iv) the Equipment Trust Trustee is entitled to the benefits of 11 U.S.C. § 1168 with respect to the Related Items of Equipment; and

(e) the Equipment Trust Trustee shall have received and executed a supplement to this Agreement giving effect

to such assumption satisfactory to the Equipment Trust Trustee and the Related Owner Trustee dated the Special Date and duly executed by the Company and such Owner Trustee;

then, automatically and without the requirement of further action by any Person, effective as of such Special Date, the Related Owner Trustee shall be released from all of its obligations under this Agreement and each Related Guaranty or otherwise (other than any obligations or liabilities of such Owner Trustee in its individual capacity incurred on or prior to the applicable Special Date or arising out of or based upon events occurring on or prior to such Special Date, which obligations and liabilities shall remain the sole responsibility of such Owner Trustee).

## ARTICLE 6

### REDEMPTION OF CERTIFICATES

Section 6.01. No Redemption Prior to Maturity. Except as provided in the Related ETA Supplement, no Certificates may be redeemed prior to their stated maturity.

## ARTICLE 7

### REMEDIES OF THE EQUIPMENT TRUST TRUSTEE UPON AN EVENT OF ACCELERATION

Section 7.01. Events of Acceleration. "Events of Acceleration" with respect to any Series of Certificates means each of the events specified as such in the Related ETA Supplement.

Section 7.02. Acceleration; Rescission and Annulment. If an Event of Acceleration with respect to any Series of Certificates occurs and is continuing, the Equipment Trust Trustee, by notice to the Related Owner Trustee and the Related Owner Participant (with a copy to the Company), or the Holders of at least 25% in aggregate principal amount of Outstanding Certificates of such Series, by notice to the Equipment Trust Trustee, the Related Owner Trustee and the Related Owner Participant (with a copy to the Company), may declare the principal of all the Certificates of such Series to be due and payable. Upon such declaration, such principal shall be due and payable immediately. At any

time after such declaration and prior to the sale or disposition of the Related Equipment Trust Estate, the Holders of a majority in aggregate principal amount of all of the Outstanding Certificates of such Series, by notice to the Equipment Trust Trustee, the Related Owner Trustee and the Related Owner Participant (with a copy to the Company), may, and the Equipment Trust Trustee shall, rescind such a declaration and annul its consequences if (i) an amount sufficient to pay all interest due or past due in respect of such Series, the principal of and Premium, if any, on any Certificates of such Series that have become due otherwise than by such declaration of acceleration and interest thereon at the Overdue Rate (and to the extent permitted by Applicable Law interest upon overdue installments of interest on all Certificates at the Overdue Rate), and all sums due and payable to the Equipment Trust Trustee with respect to such Series of Certificates have been deposited with the Equipment Trust Trustee, (ii) the rescission would not conflict with any judgment or decree and (iii) all existing ETA Defaults and Events of Acceleration under this Agreement with respect to such Series of Certificates have been cured or waived except nonpayment of principal or interest that has become due solely because of such acceleration. No such rescission shall affect any subsequent default or impair any right consequent thereon.

Section 7.03. Other Remedies Available to Equipment Trust Trustee. (a) After an Event of Acceleration with respect to the Certificates of any Series shall have occurred and so long as such Event of Acceleration shall be continuing, then and in every such case the Equipment Trust Trustee, as trustee of an express trust and as assignee hereunder of the Related Lease or as legal title holder hereunder of each Related Item of Equipment or otherwise, may, and when required pursuant to the provisions of Article 8 shall, exercise, subject to Sections 7.03(e) and 7.03(f) and any similar provisions in the Related ETA Supplement, any or all of the rights and powers and pursue any and all of the remedies accorded to the Related Owner Trustee pursuant to Section 15 of the Related Lease and this Article 7, may recover judgment in its own name as Equipment Trust Trustee against the Related Equipment Trust Estate and may take possession of all or any part of the Related Equipment Trust Estate and may exclude the Related Owner Trustee and the Related Owner Participant and all persons claiming under any of them wholly or partly therefrom.

(b) Subject to Sections 7.03(e) and 7.03(f) and any similar provisions in the Related ETA Supplement, the Equipment Trust Trustee may, if at the time such action may be lawful and always subject to compliance with any mandatory legal requirements, either with or without taking possession,



and either before or after taking possession, and either with or without instituting any legal proceedings whatsoever, and having first given notice of such sale by registered mail to the Related Owner Trustee and the Related Owner Participant (with a copy to the Company) once at least 30 days prior to the date of such sale and any other notice which may be required by law, sell and dispose of the Related Equipment Trust Estate, or any part thereof or interest therein, at public auction to the highest bidder, in one lot as an entirety or in separate lots, and either for cash or on credit and on such terms as the Equipment Trust Trustee may determine, and at any place (whether or not it be the location of the Related Equipment Trust Estate or any part thereof) and time designated in the notice above referred to; provided, however, that notwithstanding any provision herein to the contrary, the Equipment Trust Trustee shall not sell any of the Related Equipment Trust Estate unless a declaration of acceleration with respect to the Related Series of Certificates has been made pursuant to Section 7.02. Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales, or for any such adjourned sale or sales, without further notice, and the Equipment Trust Trustee and the Holder or Holders of any Certificates of the Related Series, or any interest therein, may bid and become the purchaser at any such sale. The Equipment Trust Trustee may exercise such right without possession or production of the Certificates of the Related Series or proof of ownership thereof, and as representative of the Holders of Certificates of such Series may exercise such right without notice to any Holder or including the Holders of Certificates of such Series as parties to any suit or proceeding relating to foreclosure of any property in the Related Equipment Trust Estate. Each Owner Trustee shall, pursuant to the Related ETA Supplement, irrevocably constitute the Equipment Trust Trustee the true and lawful attorney-in-fact of such Owner Trustee (in the name of such Owner Trustee or otherwise) for the purpose of effectuating any sale, assignment, transfer or delivery for enforcement of the Lien created under this Agreement, whether pursuant to foreclosure or power of sale or otherwise, to execute and deliver all such bills of sale, assignments and other instruments as the Equipment Trust Trustee may consider necessary or appropriate, with full power of substitution, such Owner Trustee thereby ratifying and confirming all that such attorney or any substitute shall lawfully do by virtue hereof. Nevertheless, if so requested by the Equipment Trust Trustee or any purchaser, such Owner Trustee shall ratify and confirm any such sale, assignment, transfer or delivery, by executing and delivering to the

Equipment Trust Trustee or such purchaser all bills of sale or other title documents, assignments, releases and other proper instruments to effect such ratification and confirmation as may be designated in any such request. The Equipment Trust Trustee agrees that each Owner Participant and each Owner Trustee shall each have the rights of a "debtor" under Section 9-505(2) of the Uniform Commercial Code with respect to the Related Equipment Trust Estate and shall be entitled to receive the notice referred to therein.

(c) Subject to Sections 7.03(e) and 7.03(f) and any similar provisions in the Related ETA Supplement, if an Event of Acceleration with respect to the Certificates of any Series has occurred and is continuing, the Related Owner Trustee shall, at the request of the Equipment Trust Trustee, promptly execute and deliver to the Equipment Trust Trustee such instruments of title or other documents as the Equipment Trust Trustee may deem necessary or advisable to enable the Equipment Trust Trustee or an agent or representative designated by the Equipment Trust Trustee, at such time or times and place or places as the Equipment Trust Trustee may specify, to obtain possession of all or any part of the Related Equipment Trust Estate. If such Owner Trustee shall for any reason fail to execute and deliver such instruments and documents after such request by the Equipment Trust Trustee, the Equipment Trust Trustee shall be entitled, in a proceeding to which such Owner Trustee shall be a necessary party, to a judgment for specific performance of the covenants contained in the foregoing sentence, conferring upon the Equipment Trust Trustee the right to immediate possession and requiring such Owner Trustee to execute and deliver such instruments and documents to the Equipment Trust Trustee. The Equipment Trust Trustee shall also be entitled to pursue all or any part of the Related Equipment Trust Estate wherever it may be found and may enter any of the premises of the Related Owner Trustee or any other Person wherever such Equipment Trust Estate may be or be supposed to be and search for such Equipment Trust Estate and take possession of and remove the Related Equipment Trust Estate. The Equipment Trust Trustee may, but shall not be obligated to, from time to time, at the expense of the Related Equipment Trust Estate, make all such expenditures for maintenance, insurance, repairs, replacements, alterations, additions and improvements to and of the Related Equipment Trust Estate as it may deem proper. In each such case, the Equipment Trust Trustee shall have the right to use, operate, store, lease, control or manage the Related Equipment Trust Estate, and to exercise all rights and powers of the Related Owner Trustee, as the Equipment Trust Trustee shall deem appropriate, including the right to enter into any

and all such agreements with respect to the use, operation, storage, leasing, control or management of the Related Equipment Trust Estate or any part thereof; and the Equipment Trust Trustee shall be entitled to collect and receive directly all tolls, rents (including Rent), issues, profits, products, revenues and other income of the Related Equipment Trust Estate and every part thereof, without prejudice, however, to the right of the Equipment Trust Trustee under any provision of this Agreement to collect and receive all cash held by, or required to be deposited with, the Equipment Trust Trustee hereunder. In accordance with the terms of this Section 7.03(c), such tolls, rents (including Rent), issues, profits, products, revenues and other income shall be applied to pay the expenses of using, operating, storing, leasing, controlling or managing the Related Equipment Trust Estate, and of all maintenance, insurance, repairs, replacements, alterations; additions and improvements thereto, and to make all payments that the Equipment Trust Trustee may be required or may elect to make, if any, for taxes, assessments, insurance or other proper charges upon the Related Equipment Trust Estate or any part thereof (including the employment of engineers and accountants to examine, inspect and make reports upon the properties and books and records of the Related Owner Trustee and, to the extent permitted by the Related Lease, of the Company), and all other payments that the Equipment Trust Trustee may be required or authorized to make under any provision of this Agreement, including this Section 7.03(c), as well as just and reasonable compensation for the services of the Equipment Trust Trustee, and of all persons properly engaged and employed by the Equipment Trust Trustee.

If an Event of Acceleration with respect to a Series of Certificates occurs and is continuing and the Equipment Trust Trustee shall have obtained possession of a Related Item of Equipment, the Equipment Trust Trustee shall not be obligated to use or operate such Item of Equipment or cause such Item of Equipment to be used or operated directly or indirectly by itself or through agents or other representatives or to lease, license or otherwise permit or provide for the use or operation of such Item of Equipment by any other Person unless (i) the Equipment Trust Trustee shall have been able to obtain insurance in kinds, at rates and in amounts satisfactory to it in its discretion to protect the Related Equipment Trust Estate and the Equipment Trust Trustee, as trustee and individually, against any and all liability for loss or damage to such Item of Equipment and for public liability and property damage resulting from use or operation of such Item of Equipment and (ii) funds are

available in the Related Equipment Trust Estate to pay for all such insurance or, in lieu of such insurance, the Equipment Trust Trustee is furnished with indemnification from the Holders of the Related Series of Certificates or any other Person upon terms and in amounts satisfactory to the Equipment Trust Trustee in its discretion to protect the Related Equipment Trust Estate and the Equipment Trust Trustee, as trustee and individually, against any and all such liabilities.

(d) Subject to Sections 7.03(e) and 7.03(f) and any similar provisions in the Related ETA Supplement, the Equipment Trust Trustee may proceed to protect and enforce this Agreement and the Certificates of a Series by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted, or for foreclosure hereunder, or for the appointment of a receiver or receivers for the Related Equipment Trust Estate or any part thereof, or for the recovery of judgment for the indebtedness secured by the Lien created under this Agreement with respect to such Equipment Trust Estate or for the enforcement of any other legal or equitable remedy available under applicable law.

(e) If and to the extent provided in the Related ETA Supplement, upon a failure by the Company to make any payment of Basic Rent under the Related Lease within such period, if any, as specified in such ETA Supplement (the "Basic Rent Grace Period") after the same shall become due, and if the Related ETA Supplement so permits, then so long as no Event of Acceleration with respect to such Series of Certificates which is not an Event of Default with respect to such Series of Certificates shall have occurred and be continuing the Related Owner Participant or the Related Owner Trustee may (but need not) pay to the Equipment Trust Trustee, at any time prior to the expiration of the period specified in such ETA Supplement (the "Specified Cure Period") after the expiration of the Basic Rent Grace Period (prior to the expiration of which Specified Cure Period the Equipment Trust Trustee shall not declare the Related Lease in default or exercise any of the rights, powers or remedies), an amount equal to the full amount of such payment of Basic Rent (or, if less, the aggregate of all amounts then due and payable hereunder or to be paid from such payment of Basic Rent to any Person other than the Related Owner Trustee as certified by the Related Owner Participant to the Equipment Trust Trustee and agreed by the Equipment Trust Trustee), together with any interest due thereon on account

of the delayed payment thereof, and such payment by the Related Owner Participant or the Related Owner Trustee shall be deemed to cure any Event of Acceleration that arose from such failure of the Company (but such cure shall not relieve the Company of any of its obligations). If the Company shall fail to perform or observe any covenant, condition or agreement to be performed or observed by it under the Related Lease, and if (but only if) the performance or observance thereof can be effected by the payment of money alone (it being understood that actions such as the obtaining of insurance and the procurement of maintenance services can be so effected), then as long as no other Event of Acceleration with respect to such Series of Certificates which is not an Event of Default shall have occurred and be continuing, the Related Owner Participant or the Related Owner Trustee may (but need not) pay to the Equipment Trust Trustee (or to such other person as may be entitled to receive the same), at any time prior to the expiration of a period equal to the Specified Cure Period after the expiration of the grace period, if any, provided with respect to such failure on the part of the Company in the Related Lease (prior to the expiration of which Specified Cure Period the Equipment Trust Trustee shall not declare such Lease in default or exercise any of the rights, powers or remedies pursuant to the Related Lease or this Article 7), all sums necessary to effect the performance or observance of such covenant or agreement of the Company, together with any interest due thereon on account of the delayed payment thereof, and such payment by the Related Owner Participant or the Related Owner Trustee shall be deemed to cure any Event of Acceleration with respect to such Series of Certificates that arose from such failure of the Company (but such cure shall not relieve the Company of any of its obligations). Any notice required to be given to any Owner Participant shall be given at the address specified for such Owner Participant in the Related ETA Supplement. Upon any payment of Basic Rent by any Owner Participant or Owner Trustee in accordance with the first sentence of this Section 7.03(e), or upon any payment of any other sums by any Owner Participant or Owner Trustee in accordance with the second sentence of this Section 7.03(e), such Owner Participant or Owner Trustee shall, to the extent of their respective payments, be subrogated, in the case of any such payment in accordance with such first sentence, to the rights of the Equipment Trust Trustee, as assignee under the Related ETA Supplement of the Related Owner Trustee, or, in the case of any such payment in accordance with such second sentence, to the rights of the Equipment Trust Trustee or such other person, as the case may be, which actually

received such payment, to receive such payment of Basic Rent or such other payment, as the case may be (and any interest due thereon on account of the delayed payment thereof), and shall be entitled to receive such payment upon its receipt by the Equipment Trust Trustee or such other person, as aforesaid (but in each case only if all amounts of principal of, and Premium, if any, and interest at the time due and payable on, the Related Series of Certificates together with interest due thereon on account of the delayed payment thereof shall have been paid in full); provided that no Owner Participant or Owner Trustee shall attempt to recover any such amount paid by it on behalf of the Company pursuant to this Section 7.03(e) except by demanding of the Company payment of such amount or by commencing an action against the Company to require the payment of such amount pursuant to the Related Lease.

The Equipment Trust Trustee shall provide notice to the Related Owner Participant and the Related Owner Trustee of any failure of the Company to make any payment of Basic Rent under the Related Lease within the Basic Rent Grace Period and any failure by the Company to perform or observe any covenant, condition or agreement to be performed or observed by it under such Lease known by it promptly after such failure; provided that any failure of the Equipment Trust Trustee to furnish such notice shall not impair or affect any of the rights of the Equipment Trust Trustee or the Holders of the Related Series of Certificates hereunder. For all purposes of this Agreement, neither the Equipment Trust Trustee nor any Owner Trustee shall be deemed to have knowledge of any fact unless one of its Responsible Officers shall have actual knowledge.

(f) Notwithstanding any provision of this Agreement to the contrary, including, without limitation, Sections 7.03(b), 7.03(c) and 7.03(d), as long as no Event of Default under a Lease shall have occurred and be continuing, neither the Equipment Trust Trustee nor the Related Owner Trustee shall take any action contrary to, or disturb, the Company's rights under such Lease, including, without limitation, (x) the right to receive all monies due and payable to it in accordance with the provisions of such Lease and (y) the Company's rights to possession and use of, and to quiet enjoyment of, the Related Items of Equipment.

(g) Each and every right, power and remedy herein given to the Equipment Trust Trustee specifically or otherwise in this Agreement shall be cumulative and shall be

in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Equipment Trust Trustee, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy. No delay or omission by the Equipment Trust Trustee in the exercise of any right, remedy or power or in the pursuance of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of any Owner Trustee or the Company or to be an acquiescence therein.

(h) Notwithstanding any other provision hereof, if any payment of principal of any Certificate shall not be made when the same shall become due and payable, or if any payment of interest on any Certificate shall not be made when the same shall become due and payable and such failure shall continue for the period prescribed in the Related ETA Supplement, the Equipment Trust Trustee shall be entitled to recover judgment, in its own name and as trustee of an express trust, upon such Certificate for the whole amount of such principal or interest, as the case may be, remaining unpaid.

Section 7.04. Waiver of Owner Trustee. Each ETA Supplement shall provide that, to the extent then or at any time thereafter enforceable under Applicable Law, the Owner Trustee thereunder covenants that it will not at any time insist upon or plead, or in any manner whatsoever claim or take any benefit or advantage of, any stay or extension of law now or at any time hereafter in force, nor claim, take nor insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Related Equipment Trust Estate or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and hereby expressly waives for itself and on behalf of each and every Person, except decree or judgment creditors of such Owner Trustee acquiring any interest in or title to the Related Equipment Trust Estate or any part thereof subsequent to the date of this Agreement, all benefit and

advantage of any such law or laws, and covenants that it will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to the Equipment Trust Trustee, but will suffer and permit the execution of every such power as though no such law or laws had been made or enacted. Such ETA Supplement shall further provide that nothing therein shall be deemed to be a waiver by the Owner Trustee thereunder of its rights under Section 7.03(e).

The Equipment Trust Trustee may maintain a proceeding of the kind contemplated in the preceding paragraph even if it does not possess any of the Certificates or does not produce any of them in the proceeding. A delay or omission by the Equipment Trust Trustee or any Holder in exercising any right or remedy accruing upon an Event of Acceleration with respect to a Series of Certificates under this Agreement shall not impair the right or remedy or constitute a waiver of or acquiescence in such Event of Acceleration.

Section 7.05. Waiver of Existing Defaults. The Holders of a majority in aggregate principal amount of the Outstanding Certificates of a Series by notice to the Equipment Trust Trustee may waive, on behalf of the Holders of all such Series of Certificates, an existing ETA Default or Event of Acceleration with respect to such Series of Certificates and its consequences except (i) an ETA Default or Event of Acceleration with respect to such Series of Certificates in the payment of the principal of or Premium, if any, or interest on any Certificate of such Series or (ii) in respect of a covenant or provision hereof which, pursuant to Section 10.02, cannot be amended or modified without the consent of each Holder affected thereby.

Section 7.06. Control by Majority. (a) The Holders of a majority in principal amount of the Outstanding Certificates of a Series may direct the time, method and place of conducting any proceeding for any remedy available to the Equipment Trust Trustee or exercising any trust or power conferred on it by this Agreement. However, the Equipment Trust Trustee may refuse to follow any direction that conflicts with law or this Agreement, that is unduly prejudicial to the rights of the Holders not joining therein or that would, in the opinion of counsel to the Equipment Trust Trustee, create a reasonable likelihood of personal liability on the part of the Equipment Trust Trustee.



(b) The Company may set a record date for purposes of determining the identity of Holders of a Series entitled to vote or consent to any action by vote or consent authorized or permitted by Section 8.05 or clause (a) of this Section 7.06. Such record date shall be the later of 30 days prior to the first solicitation of such consent or the date of the most recent list of Holders furnished to the Equipment Trust Trustee pursuant to Section 2.06(a) prior to such solicitation.

Section 7.07. Limitation on Suits by Holders. A Holder of a Certificate of any Series may pursue a remedy under this Agreement or the Related Certificates only if:

(1) the Holder gives to the Equipment Trust Trustee written notice of a continuing Event of Acceleration with respect to such Series of Certificates under this Agreement;

(2) the Holders of at least 25% in aggregate principal amount of the Certificates of such Series make a written request to the Equipment Trust Trustee to pursue the remedy;

(3) such Holder or Holders offer to the Equipment Trust Trustee indemnity satisfactory to the Equipment Trust Trustee against any loss, liability or expense to be, or which may be, incurred by the Equipment Trust Trustee in pursuing the remedy;

(4) the Equipment Trust Trustee does not comply with the request within 60 days after receipt of the request and the offer of indemnity; and

(5) during such 60-day period, the Holders of a majority in aggregate principal amount of the Certificates of such Series do not give the Equipment Trust Trustee a direction inconsistent with the request.

A Holder may not use this Agreement to prejudice the rights of another Holder of Certificates of the same Series or to obtain a preference or priority over another Holder of Certificates of such Series.

Section 7.08. Rights of Holders to Receive Payment. Notwithstanding any other provision of this Agreement, the right of any Holder to receive payment of principal of, and Premium, if any, and interest on his

Certificate on or after the respective due dates expressed in such Certificate, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 7.09. Equipment Trust Trustee May File Proofs of Claim. The Equipment Trust Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Equipment Trust Trustee and of the Holders of Certificates of a Series allowed in any judicial proceedings relating to the Company or the Related Owner Trustee, their respective creditors, or their property.

## ARTICLE 8

### EQUIPMENT TRUST TRUSTEE

#### Section 8.01. Duties of Equipment Trust Trustee.

(a) If an Event of Acceleration has occurred and is continuing, the Equipment Trust Trustee shall, upon one of its Responsible Officers obtaining actual knowledge thereof, exercise its rights and powers under this Agreement, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) Except during the continuance of an Event of Acceleration with respect to a Series of Certificates:

(1) the Equipment Trust Trustee need perform only those duties that are specifically set forth in this Agreement and no implied covenants or obligations shall be read into this Agreement against the Equipment Trust Trustee; and

(2) in the absence of bad faith on its part, the Equipment Trust Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Equipment Trust Trustee and conforming to the requirements of this Agreement. However, the Equipment Trust Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Agreement.

(c) The Equipment Trust Trustee may not be relieved from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct, except that:

(1) this paragraph does not limit the effect of paragraph (b) of this Section;

(2) the Equipment Trust Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers, unless it shall be proved that the Equipment Trust Trustee was grossly negligent in ascertaining the pertinent facts;

(3) the Equipment Trust Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with any direction received by it pursuant to Section 7.06; and

(4) the Equipment Trust Trustee shall be liable for its failure to use ordinary care in connection with the handling or payment of funds.

(d) Every provision of this Agreement that in any way relates to the Equipment Trust Trustee is subject to paragraphs (a), (b) and (c) of this Section.

(e) The Equipment Trust Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity satisfactory to it against any loss, liability or expense.

(f) Money held in trust by the Equipment Trust Trustee need not be segregated from other funds except to the extent required by law.

Section 8.02. Rights of Equipment Trust Trustee.  
Subject to the provisions of Section 315 of the Trust Indenture Act:

(a) the Equipment Trust Trustee may rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Equipment Trust Trustee need not investigate any fact or matter stated in the document;

(b) before the Equipment Trust Trustee acts or refrains from acting, it may consult with counsel or require an Officer's Certificate or an Opinion of Counsel from the Company. The Equipment Trust Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on a resolution of the Board of

Directors of the Company, the written advice of counsel acceptable to the Company and the Equipment Trust Trustee, Officer's Certificates or Opinions of Counsel provided by the Company;

(c) the Equipment Trust Trustee may act through agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care; and

(d) the Equipment Trust Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers.

To the extent that the provisions of this Section 8.02 are inconsistent with the duties of the Equipment Trust Trustee as required by Section 315 of the Trust Indenture Act, the requirements of such Section 315 shall prevail.

Section 8.03. Individual Rights of Equipment Trust Trustee. The Equipment Trust Trustee in its individual or any other capacity may become the owner or pledgee of Certificates and may otherwise deal with any Owner Trustee, the Company or an Affiliate with the same rights it would have if it were not Equipment Trust Trustee. Any Agent may do the same with like rights. However, the Equipment Trust Trustee shall comply with Sections 310(b) and 311 of the Trust Indenture Act.

Section 8.04. Funds May Be Held by Equipment Trust Trustee or Paying Agent; Investments. (a) Subject to subsection (b) of this Section 8.04, any monies (including Deposited Cash) held by the Equipment Trust Trustee or the Paying Agent hereunder as part of the Equipment Trust Estate related to any Series of Certificates may, until paid out by the Equipment Trust Trustee or the Paying Agent as herein provided, be carried by the Equipment Trust Trustee or the Paying Agent on deposit with itself and neither the Equipment Trust Trustee nor the Paying Agent shall have any liability for interest upon any such monies except as expressly provided herein or in the other Operative Documents or as otherwise agreed in writing with the Related Owner Trustee.

(b) At any time and from time to time, so long as no Event of Acceleration with respect to a Series of Certificates shall have occurred and be continuing, the Equipment Trust Trustee shall, upon an Owner Trustee Request by the Related Owner Trustee, invest and reinvest in Permitted Investments as specified in such Owner

Trustee Request any monies on deposit with the Equipment Trust Trustee as part of the Related Equipment Trust Estate, and sell any Permitted Investments, in either case, at such prices, including accrued interest, as are set forth in such Owner Trustee Request, and such Permitted Investments shall be held by the Equipment Trust Trustee until so sold in trust as part of the Related Equipment Trust Estate. So long as no Event of Default with respect to the Related Lease shall have occurred and be continuing, each Owner Trustee Request to be provided by the Related Owner Trustee pursuant to this Section 8.04(b) shall be provided by the Company.

(c) With respect to each Equipment Trust Estate, together with any such request for investment in, or sale or disposition of, any Permitted Investments, the Company on behalf of the Related Owner Trustee shall furnish the Equipment Trust Trustee with the following:

(1) a certificate of an Appraiser as to the fair value of Permitted Investments to be sold or disposed of and stating that in the opinion of such Appraiser the proposed release of such Permitted Investments from the Lien of this Agreement will not impair the security under this Agreement with respect to the Related Series of Certificates in contravention of the provisions hereof, which Appraiser shall be Independent if the fair value of such Permitted Investments and of all other property or securities released since the commencement of the then current calendar year with respect to such Equipment Trust Estate, as set forth in the certificates required by paragraph (1) of subsection (d) of Section 314 of the Trust Indenture Act, is 10% or more of the aggregate principal amount of the Related Series of Certificates at the time Outstanding; and

(2) a certificate of an Appraiser as to the fair value to the obligor of Permitted Investments to be purchased or invested in, which Appraiser shall be Independent if the fair value to the obligor of such Permitted Investments and all other securities made the basis of the withdrawal of cash constituting a part of the Related Equipment Trust Estate or the release of property or securities subject to the Lien of this Agreement, as set forth in the certificates required by paragraph (2) of subsection (d) of Section 314 of the Trust Indenture Act, is 10% or more of the aggregate principal amount of the Certificates of the Related Series at the time Outstanding.

The Company and each Owner Trustee, by its entering into an ETA Supplement, agree that the Company as agent for such Owner Trustee shall submit its investment instructions directly to the Equipment Trust Trustee and shall provide the certificates required by clauses (1) and (2) of this Section 8.04(c).

Section 8.05. Notice of Defaults. If an ETA Default or Event of Acceleration with respect to a Series of Certificates under this Agreement occurs and is continuing and if it is actually known to the Responsible Officers of the Equipment Trust Trustee, the Equipment Trust Trustee shall, within 30 days after the Equipment Trust Trustee obtains such knowledge, mail to each Holder of Certificates of such Series notice of all uncured ETA Defaults and Events of Acceleration with respect to such Series of Certificates under this Agreement in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act. Except in the case of an ETA Default in the payment of the principal of, Premium, if any, and interest on any Certificate, the Equipment Trust Trustee shall be protected in withholding the notice if and so long as the executive committee or a trust committee of directors and/or Responsible Officers in good faith determines that withholding such notice is in the interest of Holders of Certificates of the Related Series.

Section 8.06. Indemnification by the Company. (a) So long as a Lease is in effect, the Equipment Trust Trustee shall not make any claim against the Related Equipment Trust Estate for any matter for which it is indemnified against by the Company under the Related Participation Agreement without first making demand on the Company for payment thereof.

(b) To secure the payment obligations of the Company pursuant to this Section 8.06, the Equipment Trust Trustee shall have a Lien prior to the Certificates of a Series on all money or property held or collected by the Equipment Trust Trustee with respect to Certificates of such Series, except that held in trust to pay principal, Premium, if any, and interest on such Series of Certificates.

Section 8.07. Replacement of Equipment Trust Trustee. (a) The resignation or removal of the Equipment Trust Trustee and the appointment of a successor Equipment Trust Trustee shall become effective only upon the successor Equipment Trust Trustee's acceptance of appointment as provided in this Section.

(b) The Equipment Trust Trustee may resign as trustee with respect to any Series of Certificates at any time by giving 30 days' notice to the Related Owner Trustee (with a copy to the Company). The Holders of a majority in aggregate principal amount of the Outstanding Certificates of a Series may remove the Equipment Trust Trustee as trustee with respect to such Series of Certificates by so notifying the Equipment Trust Trustee, the Related Owner Trustee and the Company and will promptly appoint a successor Equipment Trust Trustee for the Certificates with the consent of the Related Owner Trustee. An Owner Trustee (acting solely pursuant to instructions from the Company) may remove the Equipment Trust Trustee as trustee with respect to a Series of Certificates if:

(1) in connection with such Series of Certificates, the Equipment Trust Trustee fails to comply with Section 8.09 or with Section 310 of the Trust Indenture Act;

(2) the Equipment Trust Trustee is adjudged a bankrupt or an insolvent;

(3) a receiver or public officer takes charge of the Equipment Trust Trustee or its property; or

(4) the Equipment Trust Trustee becomes incapable of acting.

(c) If the Equipment Trust Trustee resigns or is removed, or if a vacancy exists in the office of Equipment Trust Trustee for any reason, with respect to each Series of Certificates, the Related Owner Trustee shall promptly appoint a successor Equipment Trust Trustee.

(d) With respect to each Series of Certificates, if a successor Equipment Trust Trustee does not take office within 30 days after the retiring Equipment Trust Trustee resigns or is removed, the retiring Equipment Trust Trustee, the Related Owner Trustee or a Holder who has been a bona fide Holder of a Certificate of such Series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Equipment Trust Trustee with respect to such Series.

(e) If the Equipment Trust Trustee fails to comply with Section 8.09, any Holder may petition any court of competent jurisdiction for the removal of such Equipment

Trust Trustee and the appointment of a successor Equipment Trust Trustee with respect to the Related Series of Certificates.

(f) With respect to each Series of Certificates, a successor Equipment Trust Trustee shall deliver a written acceptance of its appointment to the retiring Equipment Trust Trustee and to the Related Owner Trustee (with a copy to the Company). Thereupon, the resignation or removal of the retiring Equipment Trust Trustee shall become effective, and the successor Equipment Trust Trustee shall have all the rights, powers and duties of the retiring Equipment Trust Trustee for which the successor Equipment Trust Trustee is to be acting as Equipment Trust Trustee under this Agreement. The retiring Equipment Trust Trustee shall promptly transfer all property and all books and records relating to the administration of the Related Equipment Trust Estate held by it as Equipment Trust Trustee to the successor Equipment Trust Trustee. The Related Owner Trustee shall give notice of each appointment of a successor Equipment Trust Trustee if there are Certificates of the Related Series Outstanding, by mailing written notice of such event by first-class mail to the Holders of Certificates of such Series.

Section 8.08. Successor Equipment Trust Trustee, Agents by Merger, Etc. If the Equipment Trust Trustee or any Agent consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust business assets to, another corporation, the successor corporation, without any further act, shall be the successor Equipment Trust Trustee or Agent, as the case may be.

Section 8.09. Eligibility; Disqualification. This Agreement shall at all times have an Equipment Trust Trustee which shall be eligible to act with respect to each Series of Certificates Outstanding as Trustee under Section 310(a) of the Trust Indenture Act and shall be a corporation organized and doing business under the laws of the United States of America, any State or Territory thereof or of the District of Columbia, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by Federal, State, Territorial, or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 8.09 the combined capital and surplus of such corporation shall be



deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

As long as any Certificates are Book-Entry Certificates deposited with DTC, the Equipment Trust Trustee or its agent or affiliate shall be a FAST Agent and will have a CODX account with DTC, as such terms are defined under the rules and regulations of DTC.

In case at any time the Equipment Trust Trustee shall cease to be eligible in accordance with the provisions of this Section 8.09, the Equipment Trust Trustee shall resign immediately in the manner and with the effect specified in Section 8.07.

Section 8.10. Trustee's Liens. The Equipment Trust Trustee in its individual capacity agrees that it will at its own cost and expense promptly take such action as may be necessary to duly discharge and satisfy in full all Trustee's Liens on each Equipment Trust Estate attributable to it in its individual capacity.

Section 8.11. Reports by Equipment Trust Trustee to Holders. Within 60 days after May 15 of each year commencing with the year 1994, so long as any Certificates are Outstanding under this Agreement, the Equipment Trust Trustee shall transmit to the Holders of each Series of Certificates Outstanding as provided in Section 313(c) of the Trust Indenture Act a brief report dated as of such May 15 if required by Section 313(a) of the Trust Indenture Act.

## ARTICLE 9

### SATISFACTION AND DISCHARGE; TERMINATION OF OBLIGATIONS

Section 9.01. Satisfaction and Discharge of Agreement; Termination of Obligations. With respect to each Series of Certificates and subject to Section 9.02, this Agreement shall cease to be of further effect, and the Related Owner Trustee and the Equipment Trust Trustee shall be deemed to have been discharged from their respective obligations with respect to the Related Series of Certificates (and the Equipment Trust Trustee, on demand and at the expense of the Related Owner Trustee, shall execute proper instruments acknowledging satisfaction and discharge of this Agreement in respect of such Series of Certificates, together with any other documents required to be executed upon expiration of the ETA Lease Term pursuant to Section 5.02) when

(a) either (i) all Certificates of such Series theretofore executed and delivered (other than (A) Certificates of such Series that have been mutilated, destroyed, lost or stolen and which have been replaced or exchanged as provided in Section 2.07 and (B) Certificates of such Series for the payment of which money held in trust hereunder has been paid to the Related Owner Trustee and discharged from such trust as provided in Section 14.01) have been delivered to the Equipment Trust Trustee for cancellation; or (ii) all Certificates of such Series not theretofore delivered to the Equipment Trust Trustee for cancellation have become due and payable (whether upon stated maturity or as a result of redemption), or will become due and payable (including as a result of a redemption in respect of which irrevocable notice has been given to the Equipment Trust Trustee on or prior to the date of the deposit mentioned below) at maturity within one year, and there has been deposited with the Equipment Trust Trustee in trust for the purpose of paying and discharging the entire indebtedness on the Certificates of such Series not theretofore cancelled by the Equipment Trust Trustee or delivered to the Equipment Trust Trustee for cancellation, an amount sufficient to discharge such indebtedness, including the principal of and interest and Premium, if any, on such Series of Certificates to the date of such deposit (in the case of Certificates which have become due and payable), or to the maturity thereof or Redemption Date therefor, as the case may be;

(b) all other amounts then due and payable hereunder have been paid; and

(c) the Related Owner Trustee has caused the Company to deliver to the Equipment Trust Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the satisfaction and discharge of this Agreement with respect to such Series of Certificates contemplated by this Section 9.01 have been complied with, as required by the Related Participation Agreement.

Section 9.02. Survival of Certain Obligations.  
Notwithstanding the provisions of Section 9.01, the obligations of the Equipment Trust Trustee contained in Sections 2.01 through 2.09, the rights, duties, immunities and privileges hereunder of the Equipment Trust Trustee, and the obligations of the Company on behalf of each Owner Trustee contained in Section 14.01, shall survive.

Section 9.03. Monies to Be Held in Trust. All monies deposited with the Equipment Trust Trustee pursuant to Section 9.01 shall be held in trust and applied by it, in accordance with the provisions of the Certificates and this Agreement, to the payment, either directly or through any Paying Agent as the Equipment Trust Trustee may determine, to the Holders of all sums due and to become due thereon for principal, interest and Premium, if any, but such money need not be segregated from other funds except to the extent required by law.

Section 9.04. Monies to Be Returned to Owner Trustee. The Equipment Trust Trustee and any Paying Agent shall promptly pay or return to an Owner Trustee upon written request of such Owner Trustee any monies held by them at any time that are not required for the payment of the principal of and Premium, if any, and interest on the Certificates of the Related Series for which such monies have been deposited pursuant to Section 9.01.

## ARTICLE 10

### AMENDMENTS AND WAIVERS

Section 10.01. Amendments to This Agreement Without Consent of Holders. Each Owner Trustee, the Equipment Trust Trustee and the Company may enter into one or more agreements supplemental hereto and to the Related ETA Supplement without the consent of any Holder of such Series of Certificates for any of the following purposes:

(1) to cure any ambiguity, defect or inconsistency herein, in such ETA Supplement or in such Series of Certificates or to make any change not inconsistent with the provisions hereof and of such ETA Supplement; provided that such change does not adversely affect the interests of any Holder of Certificates of such Series in any material respect;

(2) to evidence the succession of another party as the Owner Trustee in accordance with the terms of the Related Trust Agreement or to evidence the succession of another corporation to the Company;

(3) to evidence (in accordance with Article 8) and provide for the acceptance of appointment hereunder by a successor Equipment Trust Trustee with respect to the Certificates of such Series and to add to or change any

of the provisions of this Agreement and such ETA Supplement as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one trustee;

(4) to establish the terms of Certificates of such Series as permitted by Section 2.01;

(5) to supplement any of the provisions of this Agreement to such extent as shall be necessary to permit or facilitate the defeasance and discharge of such Series of Certificates pursuant to Section 9.01; provided that any such action shall not adversely affect the interests of any Holder of such Series of Certificates in any material respect;

(6) to convey, transfer, assign, mortgage or pledge any property to or with the Equipment Trust Trustee or to make any other provisions with respect to matters or questions arising hereunder so long as such action shall not adversely affect the interests of the Holders of Certificates of such Series;

(7) to correct or amplify the description of any property at any time subject to the Lien of this Agreement or better to assure, convey and confirm unto the Equipment Trust Trustee any property subject or required to be subject to the Lien of this Agreement, in accordance herewith or with the Related Lease;

(8) to add to the covenants of such Owner Trustee or the Company, for the benefit of the Holders of Certificates of such Series, or to surrender any rights or power herein conferred upon such Owner Trustee, the Related Owner Participant or the Company;

(9) to comply with any requirements of the SEC in connection with the qualification of this Agreement under the Trust Indenture Act;

(10) to add to the rights of the Holders of Certificates of such Series;

(11) to supplement this Agreement to provide for the Company to assume the obligations of such Owner Trustee under this Agreement and the Related Guaranties pursuant to Section 5.06;

(12) to include on the Certificates of such Series any legend as may be required by applicable law; and

(13) to add to, change or eliminate any provisions affecting Certificates of Series not yet issued by the Equipment Trust Trustee.

Section 10.02. Amendments to this Agreement with Consent of Holders. (a) With the written consent of the Holders of a majority of the aggregate principal amount of the Outstanding Certificates of a Series, the Related Owner Trustee, the Equipment Trust Trustee and the Company may enter into one or more agreements supplemental hereto to add any provisions to, or to change or eliminate any provisions of, this Agreement or of any prior supplemental agreement or to modify the rights of the Holders of Certificates of such Series; provided, however, that without the consent of each Holder affected thereby, no supplemental agreement under this Section 10.02 shall:

(1) change the stated maturity of the principal of, or the date of payment of any installment of interest on or any payment of redemption price (including Premium) with respect to, any Certificate of such Series, or change the dates upon which ETA Rent with respect to any such payment is payable, or reduce the amount of any thereof, or change to a location outside the United States the place of payment where, or the coin or currency in which, any payment hereunder is payable, or impair the right to institute suit for the enforcement of any such payment on or after the stated maturity or required date of payment thereof (or, in the case of redemption, on or after the date fixed for redemption);

(2) create any Lien on the Related Equipment Trust Estate applicable to such Series of Certificates prior to or pari passu with the Lien thereon under this Agreement except such as are permitted by this Agreement, or deprive any Holder of Certificates of such Series of the benefit of the Lien on the Related Equipment Trust Estate created by this Agreement;

(3) reduce the percentage in principal amount of the Outstanding Certificates of such Series, the consent of whose Holders is required for any such supplemental agreement, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Agreement or of certain defaults hereunder or their consequences) provided for in this Agreement;

(4) modify any provisions of the Related Guaranties; or

(5) make any change in Section 7.05 or 7.08 or this Section 10.02(a).

(b) It is not necessary under this Section 10.02 for any Holder to consent to the particular form of any proposed supplemental agreement, but it is sufficient if they consent to the substance thereof.

(c) Promptly after the execution by an Owner Trustee and the Equipment Trust Trustee of any supplemental agreement pursuant to the provisions of this Section 10.02, the Equipment Trust Trustee shall transmit by first-class mail a notice, setting forth in general terms the substance of such supplemental agreement, to all Holders of Certificates of the Related Series, as the names and addresses of such Holders appear on the Register. Any failure of the Equipment Trust Trustee to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental agreement.

Section 10.03. Revocation and Effect of Consents. Until a supplemental agreement or waiver becomes effective, a consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder of such Certificate, even if notation of the consent is not made on any Certificate. However, any such Holder or subsequent Holder may revoke the consent as to his Certificate if the Equipment Trust Trustee receives the notice of revocation before the date the supplemental agreement or waiver becomes effective. After a supplemental agreement or waiver becomes effective, it shall bind every Holder of Certificates of the Related Series affected thereby.

Section 10.04. Notation on or Exchange of Certificates. The Equipment Trust Trustee may place an appropriate notation about a supplemental agreement or waiver on any Certificate thereafter executed. The Equipment Trust Trustee in exchange for such Certificates may execute new Certificates that reflect the supplemental agreement or waiver.

Section 10.05. Equipment Trust Trustee and Owner Trustee Protected. Neither the Equipment Trust Trustee nor any Owner Trustee need sign any supplemental agreement that adversely affects their respective rights.

Section 10.06. Amendments, Waivers, Etc. of Other Operative Documents. The respective parties to each Participation Agreement, Lease and Trust Agreement may not

modify, amend or supplement any of said agreements, or give any consent, waiver, authorization or approval thereunder, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions thereof or of modifying in any manner the rights of the respective parties thereunder, except as provided in the Related ETA Supplement.

## ARTICLE 11

### ACTIONS TO BE TAKEN UPON TERMINATION OF A LEASE

Subject to satisfaction of the conditions precedent set forth in Section 4.02, upon:

(a) termination of a Lease with respect to any Item of Equipment by the Company in connection with a declaration of obsolescence or surplus on the Termination Date (as defined in the Related Lease) and upon payment to the Equipment Trust Trustee of an amount equal to the redemption price specified in the Related ETA Supplement,

(b) termination of a Lease with respect to any Item of Equipment on the Loss Payment Date, following an Event of Loss suffered by such Item of Equipment and upon payment to the Equipment Trust Trustee of an amount equal to the redemption price specified in the Related ETA Supplement, or

(c) termination of a Lease with respect to any Item of Equipment following exercise of the Company's purchase option, if any, under the Related Lease on the applicable Rent Payment Date and upon payment to the Equipment Trust Trustee of an amount equal to the redemption price specified in the Related ETA Supplement,

the Equipment Trust Trustee shall, without recourse or warranty (except as to the absence of Trustee's Liens), transfer all of the Equipment Trust Trustee's right, title and interest in and to such Item of Equipment to the Person contemplated by the relevant provisions of such Lease, and shall execute such instruments as may be reasonably requested by the Related Owner Trustee to release the Lien of this Agreement on such Item of Equipment, the Related Lease and the Related Railcar Purchase Agreement.

ARTICLE 12

THE COMPANY'S RIGHT OF QUIET ENJOYMENT

Each Holder, by its acceptance of a Certificate, acknowledges notice of, and consents in all respects to, the term of the Related Lease, and expressly, severally and as to its own actions only, agrees that, notwithstanding any other provision of any of the Related Operative Documents, so long as no Event of Default with respect to the applicable Series of Certificates has occurred and is continuing unremedied, it shall not take or cause to be taken any action contrary to the Company's rights under such Lease, including, without limitation, the right to possession and use of each Item of Equipment leased thereunder.

ARTICLE 13

COVENANTS OF THE COMPANY

Section 13.01. Reports by the Company. The Company shall:

(a) file with each Owner Trustee and the Equipment Trust Trustee within 30 days after the Company is required to file the same with the SEC copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may from time to time by rules and regulations prescribe) that the Company is required to file with the SEC pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934, as amended; or, if the Company is not required to file information, documents or reports pursuant to either of such sections, then to file with the Equipment Trust Trustee and the SEC, in accordance with rules and regulations prescribed by the SEC, such of the supplementary and periodic information, documents and reports that may be required pursuant to section 13 of the Securities Exchange Act of 1934, as amended, in respect of a security listed and registered on a national securities exchange as may be prescribed in such rules and regulations;

(b) file with each Owner Trustee, the Equipment Trust Trustee and the SEC in accordance with the rules and regulations prescribed by the SEC, such additional information, documents and reports with respect to compliance



by the Company with the conditions and covenants provided for in this Agreement, as may be required by such rules and regulations, including, in the case of annual reports, if required by such rules and regulations, certificates or opinions of independent public accountants, conforming to the requirements of Section 14.05;

(c) transmit to all Holders, in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act such summaries of any information, documents and reports required to be filed by the Company pursuant to subsections (a) and (b) of this Section 13.01 as may be required by rules and regulations prescribed by the SEC;

(d) furnish to each Owner Trustee and the Equipment Trust Trustee not less often than annually a brief certificate from the principal executive officer, principal financial officer or principal accounting officer as to his or her knowledge of the Company's compliance with all conditions and covenants under this Agreement. For purposes of this paragraph (d), such compliance shall be determined without regard to any period of grace or requirement of notice provided under this Agreement; and

(e) furnish to each Owner Trustee and the Equipment Trust Trustee:

(1) promptly after the execution and delivery of this Agreement, an Opinion of Counsel either stating that in the opinion of such counsel this Agreement has been properly recorded and filed so as to make effective the Lien intended to be created hereby, and reciting the details of such action, or stating that in the opinion of such counsel no such action is necessary to make such Lien effective; and

(2) at least annually after the execution and delivery of this Agreement, an Opinion of Counsel either stating that in the opinion of such counsel such action has been taken with respect to the recording, filing, re-recording, and refiling of this Agreement as is necessary to maintain the Lien of this Agreement, and reciting the details of such action, or stating that in the opinion of such counsel no such action is necessary to maintain such Lien.

Section 13.02. Merger of the Company. The Company shall not consolidate with or merge into any other corporation or convey, transfer or lease all or substantially

all of its assets as an entirety to any Person, whether in a single transaction or a series of related transactions, unless:

(i) (A) the successor corporation (1) shall be a Class I Railroad or (2) if such successor corporation is not a Class I Railroad, such successor corporation shall have an Affiliate which is a Class I Railroad and (B) such Class I Railroad shall have executed and delivered to the Related Owner Participant, the Related Owner Trustee and the Equipment Trust Trustee an agreement in form and substance reasonably satisfactory to each of them containing an assumption by such Class I Railroad of the due and punctual performance and observance of each agreement and condition of this Agreement and every other Operative Document to which the Company is a party,

(ii) immediately after giving effect to such consolidation, merger, conveyance, transfer or lease, no Event of Acceleration or Potential Acceleration shall have occurred or be continuing, and

(iii) such Class I Railroad shall have delivered to the Related Owner Participant, the Related Owner Trustee and the Equipment Trust Trustee, in the event such Class I Railroad shall not be the Company, an Officer's Certificate of such corporation and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and the assumption agreement mentioned in clause (i) above has been duly authorized, executed and delivered by such Class I Railroad and constitutes the legal, valid and binding obligation of such Class I Railroad enforceable against it in accordance with its terms (subject to customary qualifications as to the rights of creditors) and does not require any shareholder approval or the approval or consent of any trustee or holders of any indebtedness or obligations of such Class I Railroad (except for approval(s) and consent(s) which have been duly obtained and are in full force and effect on the date of such opinion and copies of which have been supplied to the Related Owner Participant, the Related Owner Trustee and the Equipment Trust Trustee) and as to the continued applicability of Section 1168 after giving effect to such consolidation, merger, conveyance, transfer or lease.

Upon any consolidation or merger, or any conveyance, transfer or lease of all or substantially all of the assets of the Company as an entirety in accordance with this Section 13.02, the Class I Railroad referred to in subclause (B) of clause

(i) of this Section 13.02 which is the successor corporation formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made, or which is the Affiliate of such successor corporation, shall succeed to, and be substituted for, and may exercise every right and power of, the Company, under this Agreement and the other Related Operative Documents to which the Company is a party, with the same effect as if such Class I Railroad had been named as the Company herein and therein. The Company shall reimburse the Related Owner Trustee and the Related Owner Participant, on an After-Tax Basis, for all reasonable out-of-pocket costs (including reasonable attorneys' fees) and expenses incurred by the Related Owner Trustee and the Related Owner Participant in connection with a consolidation, merger, conveyance or transfer by the Company hereunder, including any amendments to this Agreement or any other Related Operative Document required in connection with this Section 13.02.

## ARTICLE 14

### MISCELLANEOUS

Section 14.01. Repayment of Monies for Certificate Payments Held by Equipment Trust Trustee. Any money deposited with the Equipment Trust Trustee or any Paying Agent in trust for the payment of the principal of or Premium, if any, or interest on any Certificate of any Series, including without limitation any money deposited pursuant to Article 9, and remaining unclaimed for two years and eleven months (or such lesser time as the Equipment Trust Trustee shall be satisfied, after sixty days' written notice from the Related Owner Trustee or the Company, is one month prior to the escheat period provided under Applicable Law) shall be paid to such Owner Trustee; and the Holders of any Certificates Outstanding of such Series shall thereafter, as unsecured general creditors, look only to the Company (and the Company shall be liable) for payment thereof, and all liability of such Owner Trustee, the Equipment Trust Trustee or any such Paying Agent with respect to such trust money shall thereupon cease; provided that the Equipment Trust Trustee or such Paying Agent, before being required to make any such repayment, shall upon written direction of such Owner Trustee or the Company cause to be mailed to each such Holder notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of mailing, any unclaimed balance of such money then remaining will be repaid to such Owner Trustee as provided herein.

Section 14.02. Notices. (a) Any notice or communication required under the terms and provisions of this Agreement shall be duly given if such notice or communication is in writing and delivered in person or mailed by first-class mail:

if to the Company, to:

Consolidated Rail Corporation  
Two Commerce Square  
P.O. Box 41417  
Philadelphia, Pennsylvania 19101-1417

Attention: Assistant Treasurer - Financing

if to the Equipment Trust Trustee, to:

Wilmington Trust Company  
Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890

Attention: Corporate Trust Administration

In the case of any such notice to any Owner Trustee or any Owner Participant, such notice shall be to the address and with respect to the telephone and facsimile numbers specified for such Person in the Related Participation Agreement.

(b) The Company, any Owner Trustee, any Owner Participant or the Equipment Trust Trustee by notice to the others may designate additional or different addresses for subsequent notices or communications.

(c) Any notice or communication to Holders shall be mailed by first-class mail to the addresses for Holders shown on the Register. Failure to so mail a notice or communication or any defect in such notice or communication shall not affect its sufficiency with respect to other Holders entitled to receive notice.

(d) A notice or communication referred to in clause (a) above shall be deemed given when delivered.

Section 14.03. Communication by Holders with Other Holders. (a) Within five business days after the receipt by the Equipment Trust Trustee of a written application by any three or more Holders of Certificates of a Series (referred to herein as the "applicants") stating that the applicants desire to communicate with other Holders of such Series with respect to their rights under this Agreement or under the

Certificates of such Series, and accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, and by reasonable proof that each such applicant has owned a Certificate of such Series for a period of at least six months preceding the date of such application, the Equipment Trust Trustee shall, at its election, either:

(1) afford to such applicants access to all information furnished to or received by the Equipment Trust Trustee pursuant to Section 2.06(a); or

(2) inform such applicants as to the approximate number of Holders of such Series according to the most recent information furnished to or received by the Equipment Trust Trustee pursuant to Section 2.06(a), and as to the approximate cost of mailing to such Holders the form of proxy or other communication, if any, specified in such application.

If the Equipment Trust Trustee shall elect not to afford to such applicants access to such information, the Equipment Trust Trustee shall, upon the written request of such applicants, mail to all Holders of such Series copies of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Equipment Trust Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of such mailing, unless within five days after such tender, the Equipment Trust Trustee shall mail to such applicants a written statement to the effect that, in the opinion of the Equipment Trust Trustee, such mailing would be contrary to the best interests of the Holders or would be in violation of Applicable Law.

(b) Every Holder, by receiving and holding a Certificate, agrees with the Related Owner Trustee and the Equipment Trust Trustee that none of such Owner Trustee or the Equipment Trust Trustee nor any agent thereof shall be deemed to be in violation of any existing law, or of any law hereafter enacted, by reason of the disclosure of any such information as to the names and addresses of the Holders of a Series of Certificates in accordance with Section 14.03(a), regardless of the source from which such information was derived, and that the Equipment Trust Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 14.03(a).

Section 14.04. Certificate and Opinion as to Conditions Precedent. Upon any request or application by any Owner Trustee to the Equipment Trust Trustee to take any action that such Owner Trustee has the right to request or

apply for under this Agreement, the Company or such Owner Trustee, as the case may be, shall furnish to the Equipment Trust Trustee:

(1) an Officer's Certificate stating that, in the opinion of the signer, all conditions precedent, if any, provided for in this Agreement relating to the proposed action have been complied with and that the action to be taken by such Owner Trustee is in conformity with the requirements of this Agreement; and

(2) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 14.05. Statements Required in Certificate or Opinion. Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Agreement shall include:

(1) a statement that the person making such certificate or opinion has read such covenant or condition;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

Section 14.06. Rules by Equipment Trust Trustee and Agents. The Equipment Trust Trustee may make reasonable rules for action by or a meeting of Holders. The Paying Agent or Registrar may make reasonable rules and set reasonable requirements for its functions.

Section 14.07. Non-Business Days. If a payment date is not a Business Day, payment may be made on the next succeeding day that is a Business Day, and no interest shall accrue on the amount of such payment for the intervening period

Section 14.08. Governing Law. This Agreement, the Certificates and the Guaranties shall be governed by and

construed in accordance with the laws of the State of New York.

Section 14.09. Execution in Counterparts. This Agreement may be executed in separate counterparts, each of which shall be an original, but such counterparts shall together constitute but one instrument.

Section 14.10. Trust Indenture Act Controls. This Agreement shall be governed by the provisions of the Trust Indenture Act solely to the extent that mandatory provisions of law require the Trust Indenture Act to be controlling. In all other respects the express terms of this Agreement shall govern.

Section 14.11. Disclosure of Names and Addresses of Holders. Every Holder, by receiving and holding a Certificate, agrees with the Company and the Equipment Trust Trustee that neither the Company nor the Equipment Trust Trustee nor any agent of either of them shall be deemed to be in violation of any existing law, or of any law hereafter enacted that does not specifically refer to Section 312 of the Trust Indenture Act, by reason of the disclosure of any such information as to the names and addresses of the Holders in accordance with Section 312 of the Trust Indenture Act, regardless of the source from which such information was derived, and that the Equipment Trust Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 312 of the Trust Indenture Act.

IN WITNESS WHEREOF, the Equipment Trust Trustee and the Company have caused this Agreement to be duly executed by their officers thereunto duly authorized, as of the date and year first above written.

CONSOLIDATED RAIL CORPORATION

By: Thomas J. McAdams  
Title:

WILMINGTON TRUST COMPANY

By: \_\_\_\_\_  
Title:

construed in accordance with the laws of the State of New York.

Section 14.09. Execution in Counterparts. This Agreement may be executed in separate counterparts, each of which shall be an original, but such counterparts shall together constitute but one instrument.

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Section 14.11. Disclosure of Names and Addresses of Holders. Every Holder, by receiving and holding a Certificate, agrees with the Company and the Equipment Trust Trustee that neither the Company nor the Equipment Trust Trustee nor any agent of either of them shall be deemed to be in violation of any existing law, or of any law hereafter enacted that does not specifically refer to Section 312 of the Trust Indenture Act, by reason of the disclosure of any such information as to the names and addresses of the Holders in accordance with Section 312 of the Trust Indenture Act, regardless of the source from which such information was derived, and that the Equipment Trust Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 312 of the Trust Indenture Act.

IN WITNESS WHEREOF, the Equipment Trust Trustee and the Company have caused this Agreement to be duly executed by their officers thereunto duly authorized, as of the date and year first above written.

CONSOLIDATED RAIL CORPORATION

By: \_\_\_\_\_  
Title:

WILMINGTON TRUST COMPANY

By: Bruce J. B...  
Title Vice President



STATE OF DELAWARE

COUNTY OF \_\_\_\_\_

)  
)  
)

ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 199\_ before me personally appeared, \_\_\_\_\_, to me personally known, who being by me duly sworn, says that (s)he is the \_\_\_\_\_ of WILMINGTON TRUST COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on \_\_\_\_\_, 199\_ on behalf of said corporation by authority of its Board of Directors, and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My commission expires \_\_\_\_\_

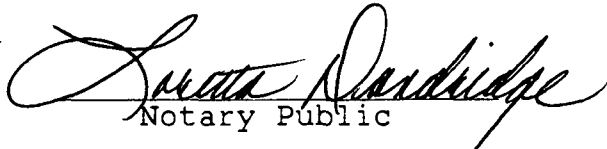
COMMONWEALTH OF PENNSYLVANIA

COUNTY OF Philadelphia

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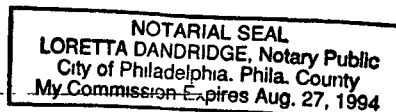
ss:

On this 23<sup>rd</sup> day of September, 199<sup>3</sup> before me personally appeared Thomas McFadden, to me personally known, who being by me duly sworn, says that he is the Director - Financing of CONSOLIDATED RAIL CORPORATION, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on Sept. 23, 199<sup>3</sup> on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

[Notarial Seal]

My commission expires \_\_\_\_\_




STATE OF DELAWARE )

COUNTY OF New Castle )

ss:

On this 23rd day of September, 1993 before me personally appeared, **BRUCE L. BISSON**, to me personally known, who being by me duly sworn, says that (s)he is the **Vice President** of WILMINGTON TRUST COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on September 23, 1993 on behalf of said corporation by authority of its Board of Directors, and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

[Notarial Seal]

ANNE C. MATTHEWS  
NOTARY PUBLIC

My commission expires MY COMMISSION EXPIRES AUGUST 9, 1995

COMMONWEALTH OF PENNSYLVANIA )

COUNTY OF \_\_\_\_\_ )

ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 199\_ before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of CONSOLIDATED RAIL CORPORATION, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on \_\_\_\_\_, 199\_ on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My commission expires \_\_\_\_\_

Consolidated Rail CorporationAppendix A to  
Equipment Trust Agreement

## Leased Equipment

"Affiliate" of any Person means any other Person directly or indirectly controlling, controlled by or under common control with such Person. For purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"After-Tax Basis", when referring to any amount, means an amount which, after deduction of all Federal, state and foreign income taxes that are required to be paid by the recipient in respect of the receipt or accrual of such amount, is equal to the payment required to be made under any Operative Document on an After-Tax Basis, calculated using the assumption that the recipient is fully taxable for Federal income tax purposes at the maximum rate of Federal income taxation applicable to corporations at the time such amount is received or properly accrued and, in the case of the Owner Participant, is fully taxable for state tax purposes at the State Rate.

"Agent" means any Paying Agent or Registrar.

"Applicable Law" means all applicable laws (foreign or domestic), treaties, judgments, decrees, injunctions, writs and orders of any court, governmental agency or authority and rules, regulations, orders, directives, licenses and permits of any governmental body, instrumentality, agency or authority, including, without limitation, all rules and regulations of the United States Department of Transportation, the ICC, the Federal Railway Administration and the Association of American Railroads and successor entities.

"Appraiser" means a Person engaged in the business of making appraisals.

"Bankruptcy Code" has the definition specified in Section 2.12 of the Equipment Trust Agreement.

"Basic Lease Commencement Date", with respect to any Item of Equipment, has the definition specified in the Related Lease.

"Basic Lease Term" means the period from the Basic Lease Commencement Date to the Basic Lease Termination Date.

"Basic Lease Termination Date" , with respect to any Item of Equipment, has the definition specified in the Related Lease.

"Basic Rent" for any Item of Equipment means the rent payable for such Item of Equipment pursuant to the Related Lease, as the same may be adjusted pursuant to the terms of such Lease.

"Bill of Sale" means a bill of sale for any Item of Equipment.

"Book-Entry Certificates" means a beneficial interest in the Certificates, ownership and transfers of which shall be made through book entries by a Clearing Agency as described in Section 2.13 of the Equipment Trust Agreement.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banking institutions in New York City or Wilmington, Delaware, or the city in which the Related Owner Trustee is located, are authorized or required by law, regulation or executive order to be closed.

"Certificate" means each Equipment Trust Certificate issued under the Equipment Trust Agreement.

"Certificate of Acceptance" means a Certificate of Acceptance to be entered into between the Related Owner Trustee and the Company for the purpose of evidencing the lease of an Item of Equipment under and pursuant to the terms of the Related Lease and to be dated the Delivery Date of such Item of Equipment.

"Certificate Owner" means, when used in Section 2.13 of the Equipment Trust Agreement, a Person who owns a Book-Entry Certificate.

"Certificate Rate" means the interest rate applicable to the Certificates of a Series at the time Outstanding.

"Class I Railroad" means a Class I carrier within the meaning of 49 C.F.R. Part 1201 or any successor provision, and which in any case shall be a "railroad" as defined in 11 U.S.C. § 1101.

"Clearing Agency" means an organization registered as a "clearing agency" pursuant to Section 17A of the Securities Exchange Act of 1934, as amended.

"Clearing Agency Participant" means a broker, dealer, bank, other financial institution or other Person for whom from time to time a Clearing Agency effects, directly or indirectly, book-entry transfers and pledges of securities deposited with the Clearing Agency.

"Closing Date" means the date of the original issuance and sale of the Certificates of a Series.

"Commitment", with respect to any Item of Equipment, has the meaning specified in the Related ETA Supplement.

"Co-Registrar" has the meaning set forth in Section 2.04 of the Equipment Trust Agreement.

"Cost", with respect to any Railcar or Item of Equipment, as the case may be, means the amount set forth for the such Railcar or Item of Equipment in the Related ETA Supplement.

"Defaulted Interest" has the meaning set forth in Section 2.09(b) of the Equipment Trust Agreement.

"Definitive Certificates" has the meaning set forth in Section 2.13 of the Equipment Trust Agreement.

"Delivery Date" for any Item of Equipment means the Business Day on which such Item of Equipment is delivered to Lessor and leased to Lessee under the Lease, all as evidenced by the execution and delivery of a Certificate of Acceptance.

"Deposited Cash" means the aggregate of (i) cash deposited with the Equipment Trust Trustee as provided by Section 3.01 of the Equipment Trust Agreement and (ii) when required or indicated by the context, any Permitted Investment purchased by the use of such cash pursuant to Section 8.04(b) of the Equipment Trust Agreement.

"Equipment Group" means the aggregate of those Items of Equipment leased to the Company pursuant to a Lease.

"Equipment Trust Agreement" means the Equipment Trust Agreement, dated as of September 15, 1993, between the Company and the Equipment Trust Trustee, as the same may be supplemented, amended or otherwise modified from time to time in accordance with the applicable provisions thereof.

"Equipment Trust Estate" means the property, rights and privileges subjected to the Lien of the Equipment Trust Agreement.

"Equipment Trust Trustee" means Wilmington Trust Company, a Delaware banking corporation, not in its individual capacity but solely as trustee under the Equipment Trust Agreement, and each other Person which may from time to time be acting as Equipment Trust Trustee in accordance with the provisions of the Equipment Trust Agreement.

"ETA Default" means any event which is or after notice or passage of time, or both, would be an Event of Acceleration.

"ETA Lease Term" has the meaning set forth in Section 5.02 of the Equipment Trust Agreement.

"ETA Rent" has the meaning set forth in Section 5.03 of the Equipment Trust Agreement.

"Event of Acceleration" has the meaning set forth in Section 7.01 of the Equipment Trust Agreement.

"Event of Default" shall have the meaning set forth in the Related Lease.

"Event of Loss", with respect to any Item of Equipment, shall have the meaning set forth in the Related Lease.

"Excluded Payments" shall have the meaning specified therefor in the Related ETA Supplement.

"Funding Date" for any Item of Equipment means the Business Day which is the Delivery Date for such Item of Equipment.

"Guaranty" means the guaranty of any Owner Trustee endorsed on a Certificate.

"Holder" means a Person in whose name a Certificate is registered on the Register.

"ICC" means the Interstate Commerce Commission and any agency or instrumentality of the United States government succeeding to its functions.

"Independent Investment Banker" means an independent investment banking institution of national standing appointed by the Company. The fees and expenses of such Independent Investment Banker shall be paid by the Company.

"Installment Certificate" means each Certificate other than a Serial Certificate.

"Installment Payment Date", with respect to Installment Certificates of any Series, means each date on which an installment payment of principal is due and payable on such Installment Certificates, as set forth in the Related ETA Supplement.

"Installment Payment Percentages" means, with respect to each Installment Payment Date applicable to the Installment Certificates of any Series, the percentage set forth opposite such Installment Payment Date in the Related ETA Supplement.

"Interest Payment Date" shall have the meaning set forth in the Related ETA Supplement.

"Interim Rent" for any Item of Equipment shall have the meaning specified therefor in the Related Lease.

"Investment Proceeds" means the net profit, income, interest, dividend or gain actually realized from the making of Permitted Investments of any Deposited Cash.

"Item of Equipment" means each Railcar, the title to which is transferred to the Equipment Trust Trustee, and which is leased to the Company under a lease (as evidenced by a Certificate of Acceptance), in accordance with the Related Participation Agreement.

"Lease" means each lease of Items of Equipment between an Owner Trustee and the Company, as the same may be amended, supplemented or otherwise modified from time to time in accordance with the applicable provisions thereof and of the Related Trust Agreement and the Equipment Trust Agreement; and each reference to such Lease shall, unless the context otherwise requires, include a reference to each Lease Supplement then in effect.

"Lease Supplement" shall mean each Lease and Equipment Trust Agreement Supplement entered into or to be entered into between an Owner Trustee and the Company for the purposes of

leasing one or more Items of Equipment, as such Lease Supplement may be amended or otherwise modified from time to time. Each Lease Supplement shall be deemed to incorporate all of the terms and conditions of the Related Lease.

"Letter of Representations" means the agreement among the Company, the Equipment Trust Trustee and the initial Clearing Agency.

"Lien" means any mortgage, pledge, lien, charge, encumbrance, lease, exercise of rights, security interest or claim.

"Loss Payment Date" has the meaning set forth in the Related Lease.

"Officer's Certificate", with respect to any company, means a certificate signed by the Chairman, the Vice Chairman, the President, any Vice President, any Assistant Vice President or the Treasurer of such company.

"Operative Document" shall have the meaning specified in the Related ETA Supplement.

"Opinion of Counsel" means a written opinion of legal counsel who, in the case of counsel for the Company, may be the senior attorney employed by the Company or other in-house or outside legal counsel designated by the Company and who shall be satisfactory to the Equipment Trust Trustee and the Related Owner Participant.

"Outstanding", when used with respect to Certificates of a Series, means, as of the date of determination, all Certificates of such Series theretofore authenticated and delivered under the Equipment Trust Agreement, other than:

(a) Certificates of such Series theretofore cancelled by the Equipment Trust Trustee or delivered to the Equipment Trust Trustee for cancellation pursuant to Section 2.08 of the Equipment Trust Agreement or otherwise;

(b) Certificates for the payment or redemption of which money in the necessary amount has been theretofore deposited with the Equipment Trust Trustee in trust for the Holders of such Certificates; provided that, if such Certificates are to be redeemed, notice of such redemption has been duly given pursuant to the Equipment Trust Agreement or provision therefor satisfactory to the Equipment Trust Trustee has been made; and



(c) Certificates in exchange for or in lieu of which other Certificates have been authenticated and delivered pursuant to the Equipment Trust Agreement;

provided, however, that in determining whether the Holders of the requisite principal amount of Outstanding Certificates of such Series have given any request, demand, authorization, direction, notice, consent or waiver under any Related Operative Document, Certificates of such Series owned by the Company or any Affiliate of the Company shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Equipment Trust Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Certificates of such Series which the Equipment Trust Trustee knows to be so owned shall be disregarded. Certificates of such Series so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Equipment Trust Trustee that the pledgee has the right so to act with respect to such Certificates of such Series and that the pledgee is not the Company or any obligor upon the Certificates of such Series or any Affiliate of the Company or such obligor.

"Outstanding", when used without reference to a specific Series, shall mean Outstanding Certificates of all Series previously issued.

"Overdue Rate" means (a) with respect to any amount which is or will be distributable to the Holders pursuant to the terms of the Equipment Trust Agreement, the rate per annum borne by the Certificates held by such Holders, and (b) with respect to any other amount, the Prime Rate plus 1%.

"Owner Participant" shall have the meaning specified in the Related Participation Agreement.

"Owner Trustee" shall mean each owner trustee who is party to an ETA Supplement, not in its individual capacity, but solely as trustee under the Related Trust Agreement, and each other Person which may from time to time be acting as Owner Trustee under such Related Trust Agreement in accordance with the provisions of the such Related trust Agreement.

"Owner Trustee Request" means a request by the Related Owner Trustee setting forth the subject matter of the request.

"Participation Agreement" means, with respect to each Equipment Group, the agreement among the Company, the Equipment Trust Trustee, the Related Owner Participant and

the Related Owner Trustee, among others, setting forth the conditions of the closing of the leveraged lease financing of such Equipment Group.

"Paying Agent" has the meaning set forth in Section 2.04 of the Equipment Trust Agreement.

"Permitted Investment" means (a) direct obligations of the United States of America and agencies thereof for which the full faith and credit of the United States of America is pledged, (b) obligations fully guaranteed by the United States of America, (c) certificates of deposit issued by, or bankers' acceptances of, or time deposits with, any bank, trust company or national banking association incorporated or doing business under the laws of the United States of America or one of the states thereof having combined capital and surplus and retained earnings of at least \$500,000,000 (including Lessor in its individual capacity or the Equipment Trust Trustee in its individual capacity if such conditions are met), (d) commercial paper of companies having a rating assigned to such commercial paper by Standard & Poor's Corporation ("S&P") or Moody's Investors Service, Inc. ("Moody's") (or, if neither such organization shall rate such commercial paper at any time, by any nationally recognized rating organization in the United States of America) equal to the highest rating assigned by such organization, and (e) repurchase agreements with any financial institutions having combined capital and surplus and retained earnings of at least \$750,000,000 which specify any of the obligations described in clauses (a) through (d) above as collateral acceptable thereunder (including Lessor in its individual capacity and the Equipment Trust Trustee in its individual capacity if such conditions are met); provided that no investment shall be eligible as and included within the definition of the term "Permitted Investment" unless the final maturity or date of return of such investment is equal to or less than one year from the date of purchase thereof.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Potential Acceleration" means an event which but for the giving of notice or the lapse of time or both would constitute an Event of Acceleration.

"Railcar Purchase Agreement" means each Railcar Purchase Agreement between the Company and an Owner Trustee relating to the purchase by such Owner Trustee of railcars rebuilt by the Company.

"Record Date", with respect to each Series of Certificates, shall have the meaning specified therefor in the Related ETA Supplement.

"Redemption Date", with respect to each Series of Certificates, shall have the meaning specified therefor in the Related ETA Supplement.

"Register" has the meaning set forth in Section 2.04 of the Equipment Trust Agreement.

"Registrar" has the meaning set forth in Section 2.04 of the Equipment Trust Agreement.

"Regulations" means the Treasury Regulations, as amended from time to time, promulgated under the Code by the United States Treasury Department.

"Related", with respect to any Operative Document, means such Operative Document executed in connection with the related Equipment Group; with respect to any Owner Trustee or Owner Participant, means the Owner Trustee or Owner Participant, as the case may be, who executed the Operative Documents related to the applicable Equipment Group; with respect to any Series, means the Series of Certificates issued pursuant to the related ETA Supplement; with respect to any Equipment Trust Estate, means the Equipment Trust Estate subjected to the Lien of the Equipment Trust Agreement pursuant to the related ETA Supplement; and, with respect to any Equipment Group or Item of Equipment, means the Equipment Group or any Item of Equipment, as the case may be, to which such Operative Document or Person relates.

"Rent" means Interim Rent, Basic Rent and Supplemental Rent.

"Rent Payment Date", with respect to each Equipment Group, has the meaning specified therefor in the Related Lease.

"Responsible Officer" means (a) with respect to any Owner Trustee, the persons specified as such in the Related ETA Supplement, (b) with respect to the Equipment Trust Trustee, any officer in the Corporate Trust Administration Department of the Equipment Trust Trustee, and (c) with respect to the Company, the Chief Financial Officer or Treasurer of the Company or any other delegate of the Chairman and Chief Executive Officer of the Company working under the direct supervision of such Chief Financial Officer or Treasurer whose responsibilities include the administration of rolling stock financings.

"Serial Certificate" means each Certificate for which the principal amount thereof is due in full at the maturity of such Certificate.

"Series" means each series of Certificates issued pursuant to an ETA Supplement.

"Special Date" has the meaning set forth in Section 5.06 of the Equipment Trust Agreement.

"Supplemental Rent" for any Item of Equipment shall have the meaning specified therefor in the Related Lease.

"Tangible Net Worth" shall mean stockholders' equity of any corporation, determined in accordance with generally accepted accounting principles as in effect from time to time, less the aggregate net amount of the following items to the extent, if any, that they were included in assets or deducted from liabilities in computing stockholder's equity: all goodwill, licenses, patents, copyrights, trade names, trade marks and other assets which in accordance with generally accepted accounting principles are deemed intangible.

"Taxes" means any and all license, registration and documentation fees and all taxes, assessments, levies, imposts, duties, charges, fees or withholdings of any nature whatsoever, together with any penalties, fines or interest thereon or other additions thereto, imposed by any Federal, state or local government, political subdivision, or taxing authority in the United States, by any government or taxing authority of or in a foreign country or of or in a territory or possession of the United States, or by any international authority.

"Temporary Certificates" means Certificates issued to Holders pursuant to Section 2.03 of the Equipment Trust Agreement.

"Termination Date", with respect to each Equipment Group, has the meaning specified therefor in the Related Lease.

"Trust Agreement" means each trust agreement between an owner participant and an Owner Trustee, as such Trust Agreement may from time to time be supplemented, amended or otherwise modified in accordance with the terms thereof and of the Equipment Trust Agreement.

"Trustee's Lien", with respect to each Equipment Group, means any Lien on one or more Items of Equipment in such

Equipment Group and arising as a result of (i) claims against or affecting the Equipment Trust Trustee (in its individual capacity or as Equipment Trust Trustee) not related to the transactions contemplated by the Equipment Trust Agreement, the Related Lease or the Related Participation Agreement, or (ii) acts or omissions of the Equipment Trust Trustee (in its individual or trust capacity) not related to the transactions contemplated by the Equipment Trust Agreement, the Related Lease or the Related Participation Agreement or not permitted under the Related Lease, the Related Participation Agreement or the Equipment Trust Agreement.

"Uniform Commercial Code" shall mean the Uniform Commercial Code of the State of New York.